

1324(a) and 1481). Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989, (49 U.S.C. 1324 (note)); unless otherwise noted.

2. The Table of Contents, Subpart B, is amended by retitling §§ 385.27 and 385.28 and adding new § 385.29, to read:

Subpart B—Delegation of Functions to Staff Members

Sec.

- * * *
- 385.27 Delegation to the Comptroller.
385.28 Delegation to the Chief, Data Systems Management Division, Office of the Comptroller.
385.29 Delegation to the Chief, Data Requirements Division, Office of the Comptroller.

3. Sections 385.27 and 385.28 are retitled and amended to read:

§ 385.27 Delegation to the Comptroller.

The Board delegates to the Comptroller the authority to:

(a) Propose and issue amendments to the Board's reporting requirements, with the concurrence of the General Counsel and any concerned bureaus, when no person having a substantial interest expresses an objection to the change.

(b) Interpret the Board's reporting requirements. This authority may not be redelegated.

(c) Except as authority is otherwise specifically delegated, waive any of the reporting requirements upon a showing of the existence of such facts, circumstances or other grounds, and subject to such limitations or conditions, as may be prescribed for waivers in the applicable regulations.

(d) Require special reports or documentation from any air carrier under circumstances where he finds that such reports or documentation are necessary to meet temporary information needs, assist in an evaluation of continued financial fitness, or comply with special information requests by Congress, the Board, or another agency or component of the Federal Government.

(e) Dismiss petitions for Board action with respect to reporting matters when such dismissal is requested or consented to by the petitioner.

(f) Grant or deny requests by air carriers for extension of filing dates for reports as specified in the Economic Regulations.

§ 385.28 Delegation to the Chief, Data Systems Management Division, Office of the Comptroller.

The Board delegates to the Chief, Data Systems Management Division, Office of the Comptroller, the authority to:

(a) Grant or deny requests by air carriers for substitution of their own forms or adaptation of Board forms to

meet special needs where Board approval of such form is required by the Economic Regulations.

(b) Grant or deny requests for confidential treatment of preliminary year-end financial reports.

(c) Grant or deny requests for data reported by commuter air carriers on Schedule T-1 of CAB Form 298-C in accordance with the limitations on the availability of these data contained in § 298.62 of this chapter.

(d) Grant or deny requests for use of international service segment data in accordance with the limitations on the availability of these data contained in section 19-6 of Part 241 of this chapter.

(e) Grant or deny requests for use of international origin and destination statistics in accordance with Board policy as set forth in § 399.100 of this chapter.

4. New § 385.29 is added to read:

§ 385.29 Delegation to the Chief, Data Requirements Division, Office of the Comptroller.

The Board delegates to the Chief, Data Requirements Division, Office of the Comptroller, the authority to:

(a) Prescribe, in specific instances, different passenger weight standards to approximate variations in actual experience, for reporting passenger ton-miles and available ton-miles.

(b) Establish record-retention practices required to achieve conformance with regulations promulgated by the Board.

(c) Interpret the Board's record-retention requirements.

(d) Waive any of the record-retention requirements as warranted, consistent with the provisions of Part 249 of this chapter.

By the Civil Aeronautics Board,
Phyllis T. Kaylor,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 210, 229, 239, 240 and 249

[Release Nos. 33-6260; 34-17291; 35-21784; IC-11439; AS-284]

Technical Amendments to Rules, Forms and Schedules; Delegation of Authority to the Director of the Division of Corporation Finance

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission announces the adoption of technical amendments to rules, forms and schedules under the Securities Act of 1933 and the Securities Exchange Act of 1934 and amendments to the Commission's general organization rule relating to delegation of authority to the Director of the Division of Corporation Finance. The technical amendments correct certain outdated references, inadvertent omissions and typographical errors and clarify certain terminology and instructions; the amendments to the rule delegating authority to the Director of the Division of Corporation Finance reconcile the provisions of that rule to the provisions of recently revised Rule 12b-25.

EFFECTIVE DATE: November 21, 1980.

FOR FURTHER INFORMATION CONTACT:

Prior to the effective date of the amendments, Mary Margaret Hammond at (202) 272-3059 or Elizabeth K. Norsworthy at (202) 272-2589. Thereafter, William E. Toomey at (202) 272-2573.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced certain technical amendments to rules, forms and schedules under the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq.) and to the Commission's general organization rule which delegates authority to the Director of the Division of Corporation Finance (17 CFR 200.30-1). The following rules, forms, and schedules are affected by these amendments: Rule 30-1; Rules 3-09 and 5-03 of Regulation S-X (17 CFR 210.3-09); Items 3, 5, 6, 7 and 9 of Regulation S-K (17 CFR 229.20); Form S-1 (17 CFR 239.11); Form S-8 (17 CFR 239.16b); Form S-11 (17 CFR 239.18); Form S-7 (17 CFR 239.26); Form S-16 (17 CFR 239.27); Form S-18 (17 CFR 239.28); Rule 12b-25 (17 CFR 240.12b-25); Rule 14a-4 (17 CFR 240.14a-4); Rule 14a-6 (17 CFR 240.14a-6); Rule 14c-5 (17 CFR 240.14c-5); Schedule 14A (17 CFR 240.14a-101); Schedule 14B (17 CFR 240.14a-102); Appendix A to Schedule 14A (17 CFR 240.14a-103); Schedule 14d-1 (17 CFR 240.14d-100); Form 8-K (17 CFR 249.308) and Form 10-K (17 CFR 249.310).

The first part of this release describes the general nature of the technical changes and the reasons therefor in order to provide a framework for understanding the text of the technical amendments set forth below. The second part of this release summarizes the amendments to the Commission's general organization rule which delegates authority to the Director of the

Division of Corporation Finance and explains the reasons for such amendments.

(I) Technical Changes

The technical amendments announced today are adopted in order (i) to amend certain rules, forms, and schedules under the Securities Act and the Exchange Act to reflect the recent adoption or amendment of certain other rules and forms under those Acts, (ii) to revise certain cross-references in the rules, forms and schedules under the Securities Act and the Exchange Act which have become outdated by reason of the adoption of uniform disclosure items in Regulation S-K; (iii) to correct certain inadvertent omissions and typographical errors made in connection with the recent adoption and amendment of Regulation S-X, Regulation S-K, and certain rules and forms under the Securities Act and the Exchange Act; and (iv) to clarify certain terminology and instructions used in certain rules and forms under the Exchange Act.

The recent adoption and amendment of certain rules and forms under the Securities Act and the Exchange Act have necessitated the amendment of certain other rules and forms in minor respects. For example, Instruction 3 to Item 6 of Regulation S-K, providing for standard disclosure of the security ownership of certain beneficial owners and management, states that the registrant shall be deemed to know the contents of any statements filed with the Commission pursuant to Section 13(d) of the Exchange Act. In order to reflect recent amendments to Rule 13d-1(b) (17 CFR 240.13d-1(b))¹ which provide that after December 31, 1978, certain beneficial owners must file a Schedule 13G, the first sentence of Instruction 3 is changed to read: "The registrant shall be deemed to know the contents of any statements filed with the Commission pursuant to Section 13(d) or 13(g) of the Exchange Act."²

Similarly, the adoption of standard disclosure items in Regulation S-K required change in a number of cross-references in the rules, forms and schedules under the Securities Act and the Exchange Act. For example, Instruction 3 to Item 1 of Form S-11 (17 CFR 239.18), providing for disclosure of the distribution spread of the securities being registered, instructs the registrant, if any of the securities being registered are to be offered for the account of security holders, to set forth following the distribution table a reference to the information called for by Instruction 4 to Item 18. To reflect the revision of Item 18 of Form S-11 to incorporate by reference the requirements of Item 6 of Regulation S-K (Security Ownership of Certain Beneficial Owners and Management), Instruction 3 to Item 1 of Form S-11 is amended to refer to the applicable instruction in Item 6 of Regulation S-K.³

Act Release No. 5949 (July 28, 1978) (45 FR 34402) and Securities Act Release No. 6019 (January 30, 1979) (44 FR 7864); Instruction 2 to Item 14 of Form S-1 which refers to Form S-9 is deleted to reflect the rescission of Form S-9 (See Securities Act Release No. 5791 (December 20, 1976) (41 FR 56301)); the reference to Item 21 of Form S-1 in Instruction (b) for Summary Prospectuses in Form S-1 is changed to refer to Item 19 of Form S-1 in order to reflect the renumbering of S-1 items (See Securities Act Release No. 5949 (July 28, 1978) (43 FR 34402)); the requirement that a registrant submit two marked copies of a registration statement on Form S-8 found in General Instruction F to Form S-8 is changed to require the submission of one marked copy in order to reflect the recent amendment of Form S-8 and Rule 464 (17 CFR 230.464) to provide for automatic effectiveness (See Securities Act Release No. 6190 (February 22, 1980) (45 FR 13438)); the reference to Item 22(b) of Form S-11 in paragraph (d) of Supplemental Information Required by Form S-11 is changed to refer to Item 21(b) of Form S-11 in order to reflect the renumbering of S-11 items (See Securities Act Release No. 5949 (July 28, 1978) (43 FR 34402)); the reference to Instruction 3(b) of Instructions as to Financial Statements of Form 10-K in Rule 12b-25(f)(1) is changed to refer to Rule 3-09(a) of Regulation S-X in order to reflect the relocation of that instruction from Form 10-K to Regulation S-X (See technical amendment to Rule 3-09(a) of Regulation S-X described in note 7 infra); the reference to Form 20 in Instruction 1 to Item 9 of Schedule 14d-1 is changed to refer to Form 20-F in order to reflect the recent substitution of Form 20-F (17 CFR 240.220f) for Form 20 (See Exchange Act Release No. 18371 (November 29, 1979) (44 FR 70132)).

³ Comparable changes occasioned by the adoption of Regulation S-K are as follows: The cross-reference to Item 19(a) in General Instruction F of Form S-1 is changed to refer to Item 6(a) of Regulation S-K; the cross-reference to Item 19(a) in Item 21 of Form S-1 is changed to refer to Item 6(a) of Regulation S-K; the cross-reference to Item 18(b) of Form S-1 in Instruction (a) for Summary Prospectuses in Form S-1 is changed to refer to Item 4(d) of Regulation S-K; the cross-reference to Item 18(a) of Form S-11 in paragraph (a) of Supplemental Information Required by Form S-11 is changed to refer to Item 6(a) of Regulation S-K; the cross-reference to Item 18(a) of Form S-11 in paragraph (b) of General Instruction A to Form S-7 are changed to refer to Items 3, 4 and 6 of Regulation S-K; the cross-reference to Items 16, 17, 19 and 20 of Form S-1 in paragraph (a) of General Instruction G to Form

In the adoption of recent amendments to the rules and forms, inadvertent omissions and typographical errors were made which require correction as soon as possible. For example, when Item 11 (Management Discussion and Analysis of Financial Condition and Results of Operations) was recently added to Regulation S-K, Guides 1 and 22 to the Preparation and Filing of Registration Statements and Periodic Reports (17 CFR 231.4936) requiring similar information in Securities Act and Exchange Act filings were withdrawn. However, when the forms, rules and schedules under the Securities Act and the Exchange Act were amended to incorporate by reference new Item 11,⁴ amendment of Item 14 of Schedule 14A was inadvertently omitted. Item 14 of Schedule 14A, therefore, is revised by these technical amendments to incorporate by reference the information

S-7 is changed to refer to Items 3, 4, and 6 of Regulation S-K; the cross-reference to Item 19(a) of Form S-1 in paragraph (a) of General Instruction G to Form S-7 is changed to refer to Item 6(a) of Regulation S-K; the cross-reference to Items 16-20 of Form S-1 in Item 10 of Form S-7 is changed to refer to Items 3, 4 and 6 of Regulation S-K; the cross-reference to Part II of Form 10-K in Undertaking D of Form S-7 is changed to refer to Items 3, 4 and 6 of Regulation S-K; the cross-reference to Items 16-20 of Form S-1 in Item 8(b) of Form S-16 is changed to refer to Items 3, 4 and 6 of Regulation S-K; the cross-references to Item 7(a) of Schedule 14A in Item 9 of Schedule 14A are changed to refer to Item 4(a) of Regulation S-K; the cross-reference to Item 7 of Schedule 14A in Item 9 of Schedule 14A is changed to refer to Item 4 of Regulation S-K; the cross-reference to Instruction 1 to Item 7(b) of Schedule 14A in Instruction 1 to Item 9 of Schedule 14A is changed to refer to Instruction 6 of Item 4(a) of Regulation S-K; the cross-references to Items 7(d) (1) and (2) of Schedule 14A in Instruction 3(c) to Item 9 of Schedule 14A are changed to refer to Item 4(d) (1) and (2) of Regulation S-K; the cross-reference to Instruction 1 of Item 7(d) of Schedule 14A in Instruction 3(c) to Item 9 of Schedule 14A is changed to refer to Instruction 1 of Item 4(d) of Regulation S-K; the cross-reference to Item 7 of Schedule 14A in Item 10(d) of Schedule 14A is changed to refer to Item 4 of Regulation S-K; the cross-references to Item 7(a) of Schedule 14A in Item 10(c) and (d) of Schedule 14A are changed to refer to Item 4(a) of Regulation S-K; the cross-reference to Instruction 1 to Item 7(b) of Schedule 14A in Instruction 1 to Item 10 of Schedule 14A is changed to refer to Instruction 6 of Item 4(a) of Regulation S-K; the cross-references to Item 7(a) of Schedule 14A in Item 11 (b) and (c) of Schedule 14A are changed to refer to Item 4(a) of Regulation S-K; the cross-reference to Item 7 of Schedule 14A in Item 11(c) of Schedule 14A is changed to refer to Item 4 of Regulation S-K; the cross-reference to Instruction 1 to Item 7(b) of Schedule 14A in Instruction 1 to Item 11 of Schedule 14A is changed to refer to Instruction 6 to Item 4(a) of Regulation S-K; the cross-reference to Item 7(f) of Schedule 14A in Item 4(b) of Schedule 14B is changed to refer to Item 4(f) of Regulation S-K; the cross-references to Item 7(d) of Schedule 14A in Appendix A to Schedule 14A is changed to refer to Item 4(d) of Regulation S-K; the cross-reference to Instruction 4 to Item 7(d) of Schedule 14A in Appendix A to Schedule 14A is changed to refer to Instruction 5 to Item 4(d) of Regulation S-K.

⁴ See Securities Act Release No. 6231 (September 2, 1980) (45 FR 63630).

¹ See Exchange Act Release No. 34-14692 (April 21, 1978) (43 FR 18484).

² Comparable changes are as follows: The reference to General Instruction H of Form 10-K in Instruction 4 to Item 3(b) of Regulation S-K is changed to refer to General Instruction G of Form 10-K in order to reflect recent amendments to Form 10-K (See Securities Act Release No. 6231 (September 2, 1980) (45 FR 63630)); the reference to "dividends paid" in paragraph (c) of Item 9 of Regulation S-K is changed to "dividends declared" in order to reconcile the language used in Item 9 with the language used in Item 10 of Regulation S-K (See Securities Act Release No. 6231 (September 2, 1980) (45 FR 63630)); the reference to Items 26, 27, 28 and 30 of Form S-1 in paragraph (b) of General Instruction G to Form S-1 is changed to refer to Items 25, 26, 27 and 29 of Form S-1 in order to reflect the renumbering of S-1 items (See Securities

required by Item 11 of Regulation S-K, i.e. management discussion and analysis of financial condition and results of operations.

Similarly, when Item 7 [Exhibits] was recently added to Regulation S-K,⁵ a typographical error was made in paragraph (b)(10)(b)(3) which describes certain material contracts which must be filed as exhibits. As proposed, that paragraph was drafted to require the filing of "[a]ny contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 10% of all such assets of the registrant and its subsidiaries." At the time of adoption, however, the phrase "of all such assets" was mistakenly typed as "of the assets," thereby inadvertently changing the materiality test from a percentage of fixed assets to a percentage of all assets. Paragraph (b)(10)(b)(3) of Item 7 is, therefore, changed by these technical amendments to substitute the phrase "of such fixed assets" for "of the assets."⁷

⁵ See Securities Act Release No. 6230 (August 27, 1980) (45 FR 58822).

⁶ See Securities Act Release No. 6149 (November 18, 1979) (44 FR 67143).

⁷ See also paragraph 9(b)(3) of the Instructions as to Exhibits in Form S-18 which is revised by these amendments to substitute the phrase "of such fixed assets" for "of the assets" to correct the same typographical error. Comparable changes are as follows: Rule 3-09(a) of Regulation S-X is changed to include former Instruction 3(b) to Financial Statements required by Form 10-K which was inadvertently omitted when the instructions to financial statements were centralized in Regulation S-X (See Securities Act Release No. 6234 (September 2, 1980) (45 FR 63682)); Paragraphs (b)(7) and (b)(9) of Rule 5-03 of Regulation S-X are changed to include the phrase "in the income statement or in a note thereto" which was inadvertently omitted when Regulation S-X was recently revised (See Securities Act Release No. 6233 (September 2, 1980) (45 FR 63680)); Item 3(e)(1) of Regulation S-K is changed to include a reference to "executive officer" in the first sentence which was inadvertently omitted at the time Item 3 of Regulation S-K was adopted (See Securities Act Release No. 5949 (July 28, 1978) (43 FR 34402)); Instruction 4 to Item 5 of Regulation S-K is changed to include a reference to "affiliate of the registrant" which was inadvertently omitted at the time Item 5 of Regulation S-K was adopted (See Securities Act Release No. 5949 (July 28, 1978) (43 FR 34402)); Column (2) requiring the name of the beneficial owner is added to Item 6(b) of Regulation S-K to correct its inadvertent omission at the time Item 6 of Regulation S-K was adopted (See Securities Act Release No. 5949 (July 28, 1978) (43 FR 34402)); Table I of Item 7 of Regulation S-K is revised to delete the "x" from the S-8 column with respect to tax opinion exhibits to correct a typographical error made at the time Item 7 of Regulation S-K was adopted (See Securities Act Release No. 6230 (August 27, 1980) (45 FR 58822)); Table I of Item 7 of Regulation S-K is revised to delete the "x" from the S-2 column with respect to letters regarding unaudited financial information to correct a typographical error made at the time Item 7 of Regulation S-K was adopted (See Securities Act Release No. 6230 (August 27, 1980) (45 FR 58822)); the reference to "Section 410" of the Internal Revenue Code in paragraph (b)(5)(b) of Item 7 of Regulation S-K is changed to "Section 401" to correct a typographical error made at the

Finally, certain technical amendments are adopted in order to clarify the meaning of certain rules and forms under the Exchange Act. For example, Rule 14a-4 requires that the form of proxy indicate "the identity of the persons on whose behalf the solicitation is made" if the solicitation is made other than by a majority of the board of directors. In order to make clear that a group soliciting proxies in opposition to the board of directors need not identify every individual member of the group, the above phrase has been deleted.

Similarly, the note to Rule 14a-6 ((Proxy) Material Required to be Filed) and Rule 14c-5 (Filing of Information Statement), stating that the printing of definitive copies for distribution should be deferred until staff comments are received and considered, is eliminated in view of confusion expressed as to whether the note modifies the provisions of Rule 14a-6 and 14c-5, which specify the time periods during which proxy material and information statements must be on file with the Commission. In order to make clear that the provisions of Rule 14a-6 and Rule 14c-5 should not be modified, the note is eliminated.

Instruction 4 to Form 8-K, requiring that a request for relief from financial statement requirements be separately submitted, is also clarified by stating that such requests should be addressed to the Chief Accountant of the Division of Corporation Finance.

(II) Delegated Authority

The amendments to the Commission's rule of general organization delegating authority to the Director of the Division of Corporation Finance reconcile the provisions of that rule to the provisions of recently revised Rule 12b-25.

Recent amendments to Rule 12b-25⁸ eliminated applications for extensions of time to file information, documents or reports under the Exchange Act, except with respect to certain audited financial statements required by Items 2 and 7 of

time Item 7 of Regulation S-K was adopted (See Securities Act Release No. 6230 (August 27, 1980) (45 FR 58822)); paragraph (b)(22) of Item 7 of Regulation S-K is amended to include former Instruction 5 to Item 4 of Form 10-K which was inadvertently omitted at the time of recent amendments to Form 10-K (See Securities Act Release No. 6231 (September 2, 1980) (45 FR 63630)); the first paragraph of Item 15 of Schedule 14A is revised to add the last sentence of former Item 15(c) of Schedule 14A which was inadvertently omitted when the instructions to financial statements were centralized in Regulation S-X (See Securities Act Release No. 6234 (September 2, 1980) (45 FR 63682)); the second paragraph of General Instruction D of Form 10-K is revised to add two sentences which were inadvertently omitted at the time of recent amendments to Form 10-K (See Securities Act Release No. 6231 (September 2, 1980) (45 FR 63630)).

⁸ See Exchange Act Release No. 16718 (April 2, 1980) (45 FR 23651).

Form 8-K. At present, however, Rule 30-1 delegates authority to the Director of the Division of Corporation Finance to grant or deny applications filed pursuant to Rule 12b-25 for extensions of time to file information, documents or reports under the Exchange Act. Accordingly, in order to make the provisions of Rule 30-1 consistent with amended Rule 12b-25, paragraph (d)(2)(i) of Rule 30-1 is amended to grant the Director authority to extend the time for filing financial statements required by Exchange Act forms and paragraph (d)(5) is amended to delete reference to the Director's authority to grant or deny applications filed pursuant to Rule 12b-25.

Request for Comment

In connection with the Commission's continuing review of the rules, regulations, schedules and forms under the Securities Act and the Exchange Act⁹, interested persons are specifically invited to submit comments identifying any additional inconsistencies, out-of-date references or confusing terminology which have not been corrected by the instant release.

Text of Amendments

17 CFR Chapter II is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. In § 200.30-1 paragraphs (d)(2)(i) and (d)(5) are amended to read as follows:

§ 200.30-1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(d) * * *

(2) * * *

(i) To extend the time for filing or to permit the omission of one or more financial statements therein required or the filing in substitution therefor of appropriate statements of comparable character;

* * * * *

(5) To grant or deny applications filed pursuant to section 12(g)(1) of the Act (15 U.S.C. 78(g)(1)) for extensions of time within which to file registration statements pursuant to that section, provided the applicant is advised of his right to have any such denial reviewed by the Commission.

* * * * *

⁹ See Securities Act Release No. 8168 (December 5, 1979) (44 FR 72804).

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

2. In § 210.3-09 paragraph (a) is amended to read as follows:

§ 210.3-09 Financial statements of subsidiaries not consolidated and 50 percent or less owned persons.

(a) Subject to § 210.3A-03 regarding group financial statements and paragraphs (b) and (c) of this section, there shall be filed for each majority-owned subsidiary not consolidated and each 50 percent or less owned person for which the investment is accounted for by the equity method by the registrant or a consolidated subsidiary of the registrant the financial statements which would be required if each such subsidiary or other person were a registrant and were required to file financial statements. Insofar as practicable, these financial statements shall be as of the same dates or for the same periods as those of the registrant. For purposes of a filing on form 10-K, if the fiscal year of any subsidiary not consolidated or 50 percent or less owned person ends within 90 days before the date of filing, or after the date of filing, the financial statements required by this paragraph may be filed as an amendment to the report within 90 days after the end of such subsidiary's or other person's fiscal year.

3. In § 210.5-03 paragraphs (b)7 and (b)9 are amended to read as follows:

§ 210.5-03 Income statements.

(b) * * *

7. Non-operating income.

State separately in the income statement or in a note thereto amounts earned from (a) dividends, (b) interest on securities, (c) profits on securities (net of losses), and (d) miscellaneous other income. Amounts earned from transactions in securities of related parties shall be disclosed as required under § 210.4-08(k). Material amounts included under miscellaneous other income shall be separately stated in the income statement or in a note thereto, indicating clearly the nature of the transactions out of which the items arose.

9. Non-operating expenses.

State separately in the income statement or in a note thereto amounts of (a) losses on securities (net of profits) and (b) miscellaneous income deductions. Material amounts included under miscellaneous

income deductions shall be separately stated in the income statement or in a note thereto, indicating clearly the nature of the transactions out of which the items arose.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

4. In § 229.20 Items 3, 5, 6, 7 and 9 are amended as follows:

§ 229.20 Information required in document.

Item 3. Directors and executive officers.

(b) * * *

Instructions. * * *

4. The information regarding executive officers called for by item 3 need not be furnished in proxy or information statements prepared in accordance with schedule 14A by those registrants relying on general instruction G of form 10-K: *Provided*, That such information is furnished in a separate item captioned Executive officers of the registrant, and included in part I of the registrant's annual report on form 10-K.

(e) *Business experience.* (1) Give a brief account of the business experience during the past five years of each director, executive officer, person nominated or chosen to become a director or executive officer, and each person named in answer to paragraph (c), including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When an executive officer or person named in response to paragraph (c) has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

Item 5. Legal proceedings.

Instructions. * * *

4. Any material proceedings to which any director, officer or affiliate of the registrant, any owner of record or beneficially of more than 5 percent of any class of voting securities of the registrant, or any associate of any such director, officer, affiliate of the registrant or security holder is a party adverse to the registrant or any of its subsidiaries or has a material interest adverse to the registrant or any of its subsidiaries, also shall be described.

Item 6. Security ownership of certain beneficial owners and management.

(b) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the registrant or any of its parents or subsidiaries other than directors' qualifying shares, beneficially owned by all directors and nominees, naming them and directors and officers of the registrant as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in rule 13d-3(d)(1) under the Exchange Act.

(1)	(2)	(3)	(4)
Title of class	Name of beneficial owner	Amount and nature of beneficial ownership	Percent of class

(c) Changes in control.

Instructions. * * *

3. The registrant shall be deemed to know the contents of any statements filed with the Commission pursuant to sections 13(d) or 13(g) of the Exchange Act. When applicable, a registrant may rely upon information set forth in such statements unless the registrant knows or has reason to believe that such information is not complete or accurate or that a statement or amendment should have been filed and was not.

Item 7. Exhibits.

Table 1.—Securities Act of 1933—Frequently Used Forms

	S-1	S-2	S-7	S-8	S-11	S-14	S-15	S-16
(8) Opinion re tax matters	X	X	X	X	X	X	X
(16) Letter re unaudited financial information	X	X	X	X	X	X	X

(b) * * *

(5) *Opinion re legality—*

(a) * * *

(b) If the securities being registered are issued under a plan and the plan is subject to the requirements of ERISA either (i) an opinion of counsel which confirms compliance with the provisions of the written documents constituting the plan with the requirements of that Act pertaining to such provisions; or (ii) a copy of the Internal Revenue Service determination letter that the plan is qualified under Section 401 of the Internal Revenue Code; or (iii) an opinion of counsel attaching a copy of the determination letter, that any amended provisions of the plan adopted subsequent to such determination comply with the requirements of the Act pertaining to such provisions.

(10) *Material contracts—*

(a) * * *

(b) * * *

(3) Any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15% of such fixed assets of the registrant on a consolidated basis; or

(22) *Subsidiaries—*

(a) List all subsidiaries of the registrant, the state or other jurisdiction of incorporation or organization of each, and the names under which such subsidiaries do business. This list should be repeated in each annual filing or an express reference made to the most recent filing containing a complete and accurate list.

(b) The names of particular subsidiaries may be omitted if the unnamed subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as of the end of the year covered by this report. (See the definition of "significant subsidiary" in rule 1.02(v) (17 CFR 210.1-02(v) of Regulation S-X.) The names of consolidated wholly-owned multiple subsidiaries carrying on the same line of business, such as chain stores or small loan companies, may be omitted: *Provided*, The name of the immediate parent, the line of business, the number of omitted subsidiaries operating in the United States and the number operating in foreign countries are given. This instruction shall not apply, however, to banks, insurance companies, savings and loan associations or to any subsidiary subject to regulation by another federal agency.

Item 9. Market price of the registrant's common stock and related security holder matters.

(c) State the frequency and amount of any dividends declared during the past two years with respect to such common stock and briefly describe any restriction on the issuer's present or future ability to pay such dividends.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

5. Section 239.11 is amended to read as follows:

§ 239.11 Form S-1, registration statement under the Securities Act of 1933.**General Instructions****F. Exchange Offers.**

If any of the securities being registered are to be offered in exchange for securities of any other issuer, the prospectus shall also include the information which would be required by Items 6 to 10 inclusive and Item 12 if the securities of such other issuer were registered on this form. Item 11 should be included if any promoter of such other issuer is a promoter, officer or director of the registrant or a security holder named in answer to Item 6(a) of Regulation S-K (17 CFR 229.20). There shall also be included the information concerning such securities of such other issuer which would be called for by Items 13, 14 or 15 if such securities were being registered. In connection with this instruction, reference is made to Rule 409.

G. Preparation of Part II.

(a) * * *

(b) If the information required by Items 25, 26, 27, or 29 has been given in a registration statement, application for registration or annual report filed with the Commission pursuant to any act administered by the Commission and no additional information is needed to make the information previously filed accurate, complete and up to date, the required information may be incorporated by a specific reference to the page or pages of the previous filing which contains such information.

Item 14 Long-Term Debt Being Registered.

(f) * * *

Instruction. The instructions to Item 13 shall also apply to this item. Section 305(a)(2) of the Trust Indenture Act of 1939 shall not be deemed to require the inclusion in the registration statement or in the prospectus of any information not required by this form.

Item 21. Marketing Arrangements.

Briefly describe any arrangement known to the registrant or to any person named in answer to Item 2 or Item 6(a) of Regulation S-K (17 CFR 229.20) made for any of the following purposes:

Instructions as to Summary Prospectuses

(a) As to Item 1, the aggregate offering price to the public, the aggregate underwriting discounts and commissions and the offering price per unit to the public; as to Item 2(a), the name of the managing underwriter or underwriters and a brief

statement as to the nature of the underwriter's obligation to take the securities; as to Item 2(c), a brief statement as to the manner of distribution; as to Item 3, a brief statement of the principal purposes for which the proceeds are to be used; Item 4; Item 5; as to Item 6, only the selected financial data (Item 10 of Regulation S-K, 17 CFR 229.20) and the ratio of earnings to fixed charges (sub items 6a-6c) need be provided; Item 7, if the registrant was organized within 5 years; as to Item 9, a brief statement of the general character of the business done and included to be done; Item 11(a); as to Item 12, a brief statement of the nature and present status of any material pending legal proceedings; as to Item 13, only 13(a)(1) and (2); as to Item 14(a), a brief statement as to interest and maturity provisions; as to Item 15, information corresponding to the foregoing; and as to Item 17 only the information required by Item 4(a) of Regulation S-K (17 CFR 229.20) with respect to outstanding options to purchase securities of any class being registered.

(b) The summary prospectus shall not contain a summary or condensation of the information required by Item 9.

5. Section 239.16b is amended to read as follows:

§ 239.16b Form S-8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to certain plans.**General Instructions**

F. Filing and Effectiveness of Registration Statement; Requests for Confidential Treatment; Number of Copies.

Original registration statements on this Form S-8 will become effective automatically on the twentieth day after the date of filing (Rule 456, 17 CFR 230.456), pursuant to the provisions of Section 8(a) of the Act (Rule 459, 17 CFR 230.459). Pre-effective amendments may be filed prior to effectiveness, and such amendments will be deemed to have been filed with the consent of the Commission (Rule 475a, 17 CFR 230.475a). Accordingly, the filing of a pre-effective amendment will not commence a new twenty-day period. Post-effective amendments on this form shall become effective upon the date of filing (Rule 464, 17 CFR 230.464). Delaying amendments are not permitted in connection with either original filings or amendments (Rule 473(d), 17 CFR 230.473(d)), and any attempt to interpose a delaying amendment of any kind will be ineffective. All filings made on or in connection with this form become public upon filing with the Commission. As a result, requests for confidential treatment made under Rule 485 (17 CFR 230.485) must be processed with the Commission staff prior to the filing of the registration statement. The number of copies of the registration statement and of each amendment required by Rules 402 and 472 (17 CFR 230.402,

230.472) shall be filed with the Commission: *Provided, however,* That the number of additional copies referred to in Rule 402(a)(2) may be reduced from ten to two and the number of additional copies referred to in Rule 472(a) may be reduced from eight to two, one of which shall be marked to clearly and precisely indicate changes.

6. Section 239.18 is amended to read as follows:

§ 239.18 Form S-11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

Item 1. Distribution Spread.

(a) * * *

Instructions. * * *

3. If any of the securities being registered are to be offered for the account of security holders, set forth following the above table a reference to the information called for by Instruction 8 to Item 6 of Regulation S-K (17 CFR 229.20).

Supplemental Information

(a) If within the past twelve months any report pertaining to broad aspects of the registrant's present or proposed operations, or to any substantial properties owned or to be acquired by the registrant, has been prepared for the registrant, any security holder named in answer to Item 6(a) of Regulation S-K (17 CFR 229.20) or any principal underwriter of the securities being registered, a copy of each such report shall be furnished as supplemental information. A brief statement of the use and any distribution of such report shall be furnished also. Any report submitted as supplemental information will be returned upon request.

(d) A brief description of any bankruptcy, receivership, assignment for the benefit of creditors or similar proceedings within the past five years with respect to any director, officer or parent of the registrant or any person named in answer to Item 21(b).

7. Section 239.26 is amended to read as follows:

§ 239.26 Form S-7, for registration under the Securities Act of 1933 of securities of certain issuers.

General Instructions

A. Rule as to Use of Form S-7.

(b) The registrant (1) has been subject to the requirements of section 12 or 15(d) of the Securities Exchange Act of 1934 and has filed all the material required to be filed pursuant to sections 13, 14 or 15(d), as applicable, for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this form; (2) has filed in a timely manner all reports required to be filed during the twelve calendar months preceding the filing and if the registrant has utilized Rule 12b-25(b) of the Securities

Exchange Act of 1934 with respect to a report, that report has actually been filed within the time period prescribed by that rule; and (3) if subject only to the requirements of section 15(d) of the Securities Exchange Act of 1934, has sent to all security holders of each class of securities to which the registration statements declared effective pursuant to the Securities Act of 1933 relate a report containing the information called for by Rule 14a-3(b) under the Securities Exchange Act of 1934 and Items 3, 4 and 6 of Regulation S-K (17 CFR 229.20) within the twelve calendar months preceding the filing of the registration statement, except that the information required by Items 3, 4 and 6 of Regulation S-K (17 CFR 229.20) need only be provided to common stockholders and holders of securities convertible into common stock.

G. Exchange offers.

(a) If any of the securities being registered are offered in exchange for assets or securities of any other person, the prospectus shall include, in addition to the other information called for by this form, the information concerning the registrant called for by Items 3, 4 and 6 of Regulation S-K (17 CFR 229.20). Describe any substantial interest in the other person, direct or indirect, by security holdings or otherwise, held within the past three years by the registrant or by each affiliate of the registrant or by any officer, director or security holder of the registrant named in answer to Item 6(a) of Regulation S-K (17 CFR 229.20) or by each associate of such person.

Item 10. Management and Others.

If there has been a change in control of the registrant within the past thirty-six calendar months, describe the change in control and provide any information called for by Items 3, 4 and 6 of Regulation S-K (17 CFR 229.20) which has not been "previously reported" as defined in Rule 12b-2 (17 CFR 240.12b-2) under the Securities Exchange Act of 1934.

Undertakings

D. The following undertaking shall be included in the registration statement if the registrant is subject only to the requirements of Section 15(d) of the Securities Exchange Act of 1934:

"The undersigned registrant hereby undertakes, so long as it remains subject to a duty to file under Section 15(d) of the Securities Exchange Act of 1934, to send to all security holders of each class of securities to which the registration statements declared effective pursuant to the Securities Act of 1933 relate a report containing the information called for by Rule 14a-3(b) under the Securities Exchange Act of 1934, and Items 3, 4 and 6 of Regulation S-K (17 CFR 229.20) except that the information required by Items 3, 4 and 6 of Regulation S-K need only be provided to common stockholders and holders of securities convertible into common stock."

8. Section 239.27 is amended to read as follows:

§ 239.27 Form S-16, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

Item 8. Additional Information.

(b) If there has been a change in control of the issuer within the past thirty-six calendar months which has not been "previously reported" as defined in Rule 12b-2 under the Securities Exchange Act of 1934, describe the change in control and provide any information called for by Items 3, 4 and 6 of Regulation S-K (17 CFR 229.20) which has not been "previously reported."

9. Section 239.28 is amended as follows:

§ 239.28 Form S-18, optional form for the registration of securities to be sold to the public by the issuer for an aggregate cash price not to exceed \$5,000,000.

Instructions as to Exhibits

(9) Material contracts— * * *

(b) * * *

(3) Any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15% of such fixed assets of the registrant on a consolidated basis; or

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

10. In § 240.12b-25 paragraph (f)(1) is amended to read as follows:

§ 240.12b-25 Notification of inability to timely file all or any required portion of a Form 10-K, 20-F, 11-K or 10-Q.

(f) * * *

(1) Financial statements to be filed by amendment to a form 10-K as provided for by paragraph (a) of § 210.3-09 or schedules to be filed by amendment in accordance with general instruction A to form 10-K; or

11. In § 240.14a-4 paragraph (a) is amended to read as follows:

§ 240.14a-4 Requirements as to proxy.

(a) The form of proxy (1) shall indicate in bold-face type whether or not the proxy is solicited on behalf of the issuer's board of directors or, if provided other than by a majority of the board of directors, shall indicate in bold-face type on whose behalf the solicitation is made; (2) shall provide a specifically designated blank space for dating the

proxy card; and (3) shall identify clearly and impartially each matter or group of related matters intended to be acted upon, whether proposed by the issuer or by security holders. No reference need be made, however, to proposals as to which discretionary authority is conferred pursuant to paragraph (c) of this section.

§ 240.14a-6 [Amended]

12. Section 240.14a-6 is amended by eliminating the note which follows paragraph (f).

§ 240.14c-5 [Amended]

13. Section 240.14c-5 is amended by eliminating the note which follows paragraph (d).

14. In § 240.14a-101 Items 9, 10, 11, 14 and 15 are amended to read as follows:

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

Item 9. Bonus, profit sharing and other remuneration plans.

(c) State the name and position with the issuer of each person specified in item 4(a) of Regulation S-K (17 CFR 229.20) who will participate in the plan and the amount which each such person would have received under the plan for the last fiscal year of the issuer if the plan had been in effect.

(d) Furnish such information, in addition to that required by this item and item 4 of Regulation S-K (17 CFR 229.20), as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation, or other remuneration or incentive plans, now in effect or in effect within the past five years, for (i) each director or officer named in answer to item 4(a) of Regulation S-K (17 CFR 229.20) who may participate in the plan to be acted upon; (ii) all present directors and officers of the issuer as a group, if any director or officer may participate in the plan, and (iii) all employees, if employees may participate in the plan.

Instructions. 1. The term "plan" as used in this item means any plan as defined in instruction 6 to item 4(a) of Regulation S-K (17 CFR 229.20).

(c) If action is to be taken with respect to any plan in which directors or officers may participate, the information called for by item 4(d)(1) and (2) of Regulation S-K (17 CFR 229.20) shall be furnished for the last five fiscal years of the issuer and any period subsequent to the end of the latest such fiscal year, in aggregate amounts for the entire period for each such person and group. If any named person, or any other director or officer, purchased securities through the exercise of options during such period, state the aggregate amount of securities of that

class sold during the period by such named person and by such named person and such other directors and officers as a group. The information called for by this instruction 3(c) is in lieu of the information since the beginning of the issuer's last fiscal year called for by item 4(d)(1) and (2) of Regulation S-K (17 CFR 229.20). If employees may participate in the plan to be acted upon, state the aggregate amount of securities called for by all options granted to employees during the five-year period and, if the options were other than "restricted" or "qualified" stock options or options granted pursuant to an "employee stock purchase plan," as the quoted terms are defined in sections 422 through 424 of the Internal Revenue Code, state that fact and the weighted average option price per share. The information called for by this instruction may be furnished in the form of the table illustrated in Appendix A (§ 240.14a-103). See instruction 1 to item 4(d) of Regulation S-K (17 CFR 229.20).

Item 10. Pension and retirement plans.

(c) State (1) the name and position with the issuer of each person specified in item 4(a) of Regulation S-K (17 CFR 229.20) who will be entitled to participate in the plan, (2) the amount which would have been paid or set aside by the issuer and its subsidiaries for the benefit of such person for the last fiscal year of the issuer if the plan has been in effect, and (3) the amount of the annual benefits estimated to be payable to such person in the event of retirement at normal retirement date.

(d) Furnish such information, in addition to that required by this item and item 4 of Regulation S-K (17 CFR 229.20), as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation or other remuneration or incentive plans, now in effect or in effect within the past five years, for (i) each director or officer named in answer to item 4(a) of Regulation S-K (17 CFR 229.20) who may participate in the plan to be acted upon; (ii) all present directors and officers of the issuer as a group, if any director or officer may participate in the plan, and (iii) all employees, if employees may participate in the plan.

Instructions. 1. The term "plan" as used in this item means any plan as defined in instruction 6 to item 4(a) of Regulation S-K (17 CFR 229.20). Instruction 2 to item 9 shall apply to this item.

Item 11. Options, warrants or rights.

(b) State separately the amount of options, warrants or rights received or to be received by the following persons, naming each such person: (i) Each director or officer named in answer to item 4(a) of Regulation S-K (17 CFR 229.20); (ii) each nominee for election as a director of the issuer; (iii) each associate of such directors, officers or nominees; and (iv) each other person who received or is to receive 5% or more of such options, warrants

or rights. State also the total amount of such options, warrants or rights received or to be received by all directors and officers of the issuer as a group, without naming them.

(c) Furnish such information, in addition to that required by this item and item 4 of Regulation S-K, as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation, or other remuneration or incentive plans, now in effect or in effect within the past five years, for (i) each director or officer named in answer to item 4(a) of Regulation S-K (17 CFR 229.20) who may participate in the plan to be acted upon; (ii) all present directors and officers of the issuer as a group, if any director or officer may participate in the plan, and (iii) all employees, if employees may participate in the plan.

Instructions. 1. The term "plan" as used in this item means any plan as defined in instruction 6 to item 4(a) of Regulation S-K (17 CFR 229.20).

Item 14. Mergers, consolidations, acquisitions and similar matters.

(9) Furnish the information required by item 11 of Regulation S-K (17 CFR 229.20)

Item 15. Financial statements and supplementary data.

If action is to be taken with respect to any matter specified in items 12, 13 or 14 above, furnish the financial statements required by Regulation S-X and the supplementary financial information requested by item 12 of Regulation S-K. One copy of the definitive proxy statement filed with the Commission shall include a manually signed copy of the accountant's certificate. In the usual case, financial statements are deemed material to the exercise of prudent judgment where the matter to be acted upon is the authorization or issuance of a material amount of senior securities, but are not deemed material where the matter to be acted upon is the authorization or issuance of common stock, otherwise than in an exchange, merger, consolidation, acquisition or similar transaction.

15. In § 240.14a-102 Item 4 is amended as follows:

§ 240.14a-102 Schedule 14B. Information to be included in statements filed by or on behalf of a participant (other than the issuer) pursuant to § 240.14a-11(c) (Rule 14a-11(c)).

Item 4. Further matters.

(b) Furnish for yourself and your associates the information required by item 4(f) of Regulation S-K (17 CFR 229.20).

16. Section 240.14a-103 is amended to read as follows:

§ 240.14a-103 Appendix A to Schedule 14A (§ 240.14a-101).

The table set forth below is an illustration of the presentation in tabular form of the information required by item 4(d) of Regulation S-K (17 CFR 229.20) and instruction 3(c) to item 9(d), which also applies to items 10(d) and 11(c). If only item 4(d) of Regulation S-K (17 CFR 229.20) applies and items 9, 10, and 11 are inapplicable, information need only be furnished for the period specified in item 4(d) of Regulation S-K (17 CFR 229.20), information as to shares sold may be omitted, and the reference at the foot of the table to options granted to employees may be omitted. See instruction 5 to item 4(d) of Regulation S-K. Other tabular presentations are, of course, acceptable if they include the necessary data. Tabular presentation may not be needed if only a very few options have been granted.

17. In § 240.14d-100 Instruction 1 to Item 9 is amended to read as follows:

§ 240.14d-100 Schedule 14D-1. Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934.**Item 9. Financial Statements of Certain Bidders.**

Instructions. 1. The facts and circumstances concerning the tender offer, particularly the terms of the tender offer, may influence a determination as to whether disclosure of financial information is material. However, once the materiality requirement is applicable, the adequacy of the financial information will depend primarily on the nature of the bidder.

In order to provide guidance in making this determination, the following types of financial information will be deemed adequate for purposes of this item for the type of bidder specified: (a) Financial statements prepared in compliance with form 10 as amended (§ 249.210 of this chapter) for a domestic bidder which is otherwise eligible to use such form; and (b) financial statements prepared in compliance with form 20-F (§ 249.220 of this chapter) for a foreign bidder which is otherwise eligible to use such form.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

18. Section 249.308 is amended to read as follows:

§ 249.308 Form 8-K, for current reports.

4. Filing of other financial information in certain cases.

The Commission may, upon the written request of the registrant and where consistent with the protection of investors, extend the time for filing the financial statements herein required or permit the omission of one or more of such financial statements or the filing in substitution therefor of appropriate

statements of comparable character, if the required audited financial statements are not reasonably available to the registrant, because the obtaining thereof would involve unreasonable effort, expense or practical difficulties. A written request for such relief should be submitted, separately from the subject report or the cover letter to the report, to the Chief Accountant of the Division of Corporation Finance. The request, other than a request for an extension of time to file (except where necessary for a determination of the request), shall set forth the following information:

19. In § 249.310 General Instruction D is amended to read as follows:

§ 249.310 Form 10-K, annual report pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.**D. Signature and Filing of Report.**

The report shall be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least the majority of the board of directors or persons performing similar functions. The name of each person who signs the report shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the report.

Statutory Authority

The technical amendments set forth herein are adopted pursuant to authority in Sections 7, 10 and 19(a) of the Securities Act (15 U.S.C. 77g, 77j, 77s(a)); Sections 13, 14, 15(d) and 23(a) of the Exchange Act (15 U.S.C. 78m, 78n, 78o(d), 78w(a)); Sections 5(b), 14 and 20(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79e(b), 79n, 79t(a)); and Sections 8, 30, 31(c) and 38(a) of The Investment Company Act of 1940 (15 U.S.C. 80a-8, 80a-29, 80a-30(c) and 80a-37(a)). The amendments to the Commission's general organization rule delegating authority to the Director of the Division of Corporation Finance are adopted pursuant to Section 1(a) of the Delegation of Functions Act (15 U.S.C. 78d-1(a)).

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 13, 14, 15(d), 23(a), 48 Stat. 894, 895, 901; secs. 3, 8, 49, Stat. 1377, 1379; sec. 203(a), 49 Stat. 704; secs. 4, 5, 6, 78 Stat. 569, 570-574; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 84 Stat. 1497; secs. 10, 18, 89 Stat. 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; secs. 5(b), 14, 20(a), 49 Stat. 812, 827, 833; secs. 8, 30, 31(c), 38(a), 54 Stat. 803, 836, 838, 841; 74 Stat. 201; 84 Stat. 1415; sec. 1(a), 76 Stat. 394; 89 Stat. 163; (15 U.S.C. 77g, 77j, 77s(a), 78m, 78n, 78o(d), 78w(a), 79e(b), 79n, 79t(a), 80a-8, 80a-29, 80a-30(c), 80a-37(a), 78d-1(a)))

Procedural Matters

With respect to the technical amendments to the rules, forms and schedules under the Exchange Act, as required by Section 23(a) of the Exchange Act (15 U.S.C. 78w(a)), the Commission has considered the impact that such technical amendments would have on competition and has concluded that such amendments would not impose any burden on competition.

With respect to the technical amendments to Regulation S-X, Regulation S-K, and the rules, forms and schedules under the Securities Act and the Exchange Act, the Commission believes that it is appropriate to adopt these technical amendments effective immediately in order to clarify rule changes adopted by the Commission on August 27, 1980¹⁰ and September 2, 1980¹¹ and to eliminate as soon as possible potential confusion resulting from inconsistencies, inadvertent omissions and typographical errors described above. Accordingly, the Commission, pursuant to Section 553(b) of the Administrative Procedure Act ("APA") (5 U.S.C. 553(b)) for good cause finds that notice and opportunity for public comment are not required and that to provide for such notice and comment at this time is impracticable, unnecessary and contrary to the public interest. In addition, the Commission, pursuant to Section 553(d) of the APA (5 U.S.C. 553(d)) finds good cause to adopt the foregoing technical amendments effective immediately in order to clarify existing provisions of Regulations S-X and S-K and the rules, forms and schedules under the Securities Act and the Exchange Act.

With respect to the amendments to the Commission's general organization rule delegating authority to the Director of the Division of Corporation Finance, the Commission finds that such amendments relate solely to agency management and personnel and, accordingly, are excepted pursuant to Section 553(a)(2) of the APA (5 U.S.C. 553(a)(1)) from the provisions of the APA which require prior notice and comment (5 U.S.C. 553(b)) and postponement of the effective date for at least 30 days after publication in the Federal Register (5 U.S.C. 553(d)).

¹⁰ See Securities Act Release No. 6230 (August 27, 1980) (45 FR 58822).

¹¹ See Securities Act Release No. 6231 (September 2, 1980) (45 FR 6360) and Securities Act Release No. 6234 (September 2, 1980) (45 FR 63682).

By the Commission.
 George A. Fitzsimmons,
 Secretary.
 November 13, 1980.
 [FR Doc. 80-36388 Filed 11-20-80; 8:45 am]
 BILLING CODE 8010-01-M

17 CFR Parts 229, 240

[Release Nos. 33-6261, 34-17301, 35-21792, IC-11440]

Uniform and Integrated Reporting Requirements: Management Remuneration Final Amendments to Item 4 of Regulation S-K

AGENCY: Securities and Exchange Commission.

ACTION: Final rulemaking.

SUMMARY: The Commission is amending Item 4 of Regulation S-K (17 CFR 229.20). In general, the amendments pertain to various aspects of remuneration disclosure including: Pension, option and stock appreciation right plans; the definition of an executive officer; compensation relating to the termination of employment; and indebtedness of management. In addition, certain technical amendments are made and certain staff interpretations are codified in the amendments. These amendments are intended to clarify disclosure requirements, to correct major distortions in the remuneration table and to provide meaningful information to investors with respect to management remuneration.

EFFECTIVE DATE: For documents filed after January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Prior to the effective date contact Joseph G. Connolly, Jr., (202) 272-3097, Chief, Office of Tender Offers, or Bruce S. Mendelsohn (202) 272-2091, Office of Disclosure Policy; thereafter contact Ann Glickman, Office of Chief Counsel, (202) 272-2573, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today adopted amendments to Item 4 of Regulation S-K pursuant to Sections 6, 7, 8, and 19 of the Securities Act of 1933 (15 U.S.C. 77a et seq.) (the "Securities Act") and Section 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) (the "Exchange Act"). These amendments involve the disclosure of management remuneration and specifically address pension, option and stock appreciation right (including phantom stock) plans, the definition of

an executive officer, compensation relating to the termination of employment, indebtedness of management, transactions with management, and certain other technical amendments.

On May 6, 1980, the Commission published Release No. 33-6210 (May 6, 1980) (45 FR 31733) which proposed for comment revisions to Item 4 of Regulation S-K (the "May 1980 proposals"). While the adopted amendments adhere to the concepts represented by the proposals, certain revisions were made in response to further study and to the comment letters received.

The Commission believes that information about management remuneration is important to both stockholders and investors, because it is necessary and appropriate in evaluating the goals and policies of the company, the governance of the company, the cost of management, and the integrity of management. Accordingly, the Commission has devoted significant efforts in recent years to expand and improve disclosure in this area. However, the Commission is also aware that its rules on disclosure of management remuneration are detailed, that the costs of generating the necessary data are substantial, and that compliance would be aided by minimizing unnecessary changes in the rules. The Commission believes that these amendments correct significant distortions arising under prior rules, and therefore is not inclined to make further modifications to the basic rules, except in certain limited areas or unless further problems arise. The public is requested to continue to communicate with the Commission staff on any difficulties or further suggestions relating to remuneration disclosure, and the staff will continue to be available to provide interpretive guidance.

The following portions of this release contain a background discussion and a synopsis of the amendments which includes a discussion of certain issues raised by the commentators. However, attention is directed to the text of the amendments for a more complete understanding.

I. Background

In Release No. 33-6003 (December 4, 1978) (43 FR 58151), the Commission adopted amendments to Item 4 of Regulation S-K, substantially revising the disclosure requirements relating to management remuneration (the "1978 amendments"). The revised Item 4 required tabular and other forms of disclosure as to all remuneration from the registrant and its subsidiaries for

services during the latest fiscal year by certain specified persons and officers and directors as a group.¹ The 1978 amendments resulted in part from the Commission's recognition that remuneration packages had become more diverse and complex and, as a result, disclosure had become less uniform.² Many forms of remuneration were not being included in the then required table³ but instead were being disclosed through narrative discussions set forth in text, footnotes or paragraphs which, in many cases, obscured the total remuneration received. Therefore, it was the Commission's intention that the Item 4(a) remuneration table reflect all remuneration which can be quantified and related to services performed by specified members of management during the fiscal year.

The May 1980 proposals were the result of continuous monitoring and interpretation of the remuneration requirements after the 1978 amendment. While the Commission found that the remuneration table generally worked well,⁴ it also recognized that certain modifications were necessary. In this regard, it became apparent that there are forms of remuneration that are difficult to quantify and relate to a particular year's services. The May 1980 proposals and the amendments adopted today reflect the Commission's belief

¹ Item 4(a) of Regulation S-K requires tabular disclosure (the "remuneration table") of total remuneration for each of the five most highly compensated executive officers and directors and for all officers and directors as a group. The remuneration table consists of four main columns. Columns A and B call for the name of the individual or the number of persons in the group and the capacities in which such persons served during the year. Column C reports cash and cash-equivalent forms of remuneration ("current remuneration") and is separated into 2 subcolumns. Instruction 2 to Item 4(a) provides for the inclusion in Column C1 of all salaries and fees paid with respect to services rendered during the registrant's last fiscal year and the inclusion in Column C2 of other cash or cash-equivalent amounts. Column D includes remuneration for which amounts are expensed for financial reporting purposes and the measurement of benefits or the distribution or unconditional vesting thereof is subject to future events ("contingent remuneration").

² See Release No. 33-5950 (July 28, 1978) (43 FR 34415), which proposed the 1978 Item 4 amendments for comment.

³ Required by former Item 7(a) of Schedule 14A.

⁴ The Commission is of the view that management should be permitted a measure of flexibility in determining the placement of remuneration disclosure in its proxy or information statements and, accordingly, has not adopted specific requirements in this area. In this regard, the Commission notes that since the adoption of the 1978 amendments to Item 4, registrants have generally presented all remuneration disclosure together in their materials. The revisions adopted today envision that this practice will continue and that all tables relating to the various components of remuneration will remain concentrated in one section of the proxy or information statement.

that remuneration resulting from stock option, pension and stock appreciation right plans is better suited to uniform disclosure outside the parameters of the Item 4(a) table. As will be discussed below, since Column D entries are keyed to amounts expensed for financial reporting purposes, most of the Commission's concerns result from distortions caused by accounting treatment of certain economic benefits.⁵

The Commission's efforts to review, modify, and simplify the reporting requirements received support from almost all of the more than 90 commentators.⁶ Most commentators believed that the proposals were a positive step forward in creating more comprehensible disclosure in this area and complimented the Commission for undertaking to review its rules. In light of the generally favorable response by the commentators and the resolution of the distortions, the Commission has determined to adopt these amendments for the 1981 proxy season.

II. Synopsis of Amendments

A. Clarification of Remuneration Included in Column C

Allocation of amounts to the proper tabular columns has created some confusion among registrants and their advisors during the past two years.⁷ In particular, Instructions 3(a), 3(b) and 3(c) to Item 4(a), which list forms of compensation that may require reporting in Column D, have been the subject of many interpretive questions. For example, the Commission found that some registrants have had the misconception that amounts attributable to the remuneration plans specified in these instructions should always be reported in Column D, rather than Column C. However, Column D is to be used for remuneration amounts that have been expensed for financial reporting purposes but as to which the

measurement of benefits or the distribution or unconditional vesting thereof is subject to future events. Therefore, if an amount under a specified plan is not subject to a future contingency, a Column C entry may be proper.

In order to clarify the proper allocation of amounts between Column C and D, the Commission proposed in Release No. 33-6210 to add a parenthetical note in Instruction 2 to Item 4(a) which would have stated that the specific forms of remuneration referred to in Instruction 3 to Item 4(a) are properly reported in Column C if the distribution of such remuneration or the unconditional vesting or measurement of benefits thereunder is not subject to future events. The commentators who addressed the issue generally endorsed the proposal and recognized it as merely a codification of a staff interpretation contained in Release No. 33-6186⁸ and as consistent with past staff administrative practice.

In response to comments, the Commission has decided that a new Instruction 2(e) to Item 4(a) would be preferable to the proposed parenthetical note; the language of the note has been included substantially as proposed, but with additional clarification. Instruction 2(e) requires, consistently with the Commission's past interpretations, the inclusion in Column C of remuneration attributable to plans of the type described in Instruction 3 to Item 4(a) if at the end of the fiscal year such remuneration was distributed to or for the account of the specified individuals or group, or was accrued and the measurement and the distribution or unconditional vesting thereof were not subject to future events. The instruction has also been expanded to indicate that, if remuneration as conditioned on substantial future service, or if the amount or value of or entitlement to remuneration is dependent on future earnings performance or market values, the remuneration is "subject to future events" under this standard. Where part of an award is subject to future events, that part would properly be included in Column D, while the portion not subject to future events would be included in Column C.

Furthermore, several commentators noted that the language in the proposed

parenthetical note was inconsistent with existing Instruction 2 to Item 4(a) (relating to Column C disclosures). It was pointed out that the proposed clarification and Instruction 3 to Item 4(a) (relating to Column D disclosures) provides that remuneration should be reported in Column C whenever not subject to future events, although current Instruction 2 to Item 4(a) includes in Column C amounts which with "reasonable certainty" will be distributed or unconditionally vested in the future. The commentators requested that the language of the instructions be made consistent so as to clarify the appropriate test for Column C amounts. To resolve the inconsistency, the Commission has revised Instruction 2 to Item 4(a) to delete the reference to "reasonable certainty" and substitute the term "not subject to future events," and has made other minor changes to conform Instructions 2, 2(e) and 3 to Item 4(a). The Commission believes that the objective test based on "future events" is more meaningful and preferable under the circumstances. These technical language changes do not, however, affect the meaning of the standard nor alter present or past staff interpretations.

B. Instruction 1(b) to Item 4(a)—Definition of Executive Officer

In Release No. 33-6210, the Commission proposed to amend the definition of the term "executive officer" appearing in Instruction 1(b) to Item 4(a)⁹ by adding the following sentence:

"Executive officers" of subsidiaries may be deemed "executive officers" of the registrant if they perform policy-making functions for the registrant.

The Commission stated that this proposal reflected the initial intention of the instruction. Indeed, in Release No. 33-6003, the Commission advised registrants that they should give careful consideration to the question of who are the appropriate individuals to be included in the table, and to whether certain highly compensated directors or employees of subsidiaries are in fact "executive officers" of the registrant. Additionally, the Commission stated that it would monitor the disclosure practices in this area to determine whether further actions were appropriate. The Commission's proposal in this area was the result of the perceived continuance of

⁵ It should be emphasized that only certain market-based plans such as options (which ordinarily are never reflected in compensation expense), and stock appreciation right and certain phantom stock plans (where changes in the market value of securities immediately affect compensation expense) are reported separately under these amendments.

⁶ The commentators may be categorized as follows: management and compensation consulting firms (2); accounting associations (1); law firms and bar associations (9); banks, bank holding companies and banking associations (3); industry or trade associations (5); corporations (71); and individuals (1). Copies of the comment letters are available for public inspection and copying at the Commission's Public Reference Room (File No. S7-835). For the convenience of the public, a copy of the summary of comments prepared by the staff of the Commission has been placed in File No. S7-835 and is also available for public inspection and copying.

⁷ Indeed, this was an important subject of Release No. 33-6186.

⁸ In Interpretive Response 17 of Release No. 33-6186, the Division of Corporation Finance stated that with regard to deferred compensation plans (a type of plan enumerated under Instruction 3(a) to Item 4(a) with respect to Column D) for which amounts are expensed, Column D is to be used only if the distribution of remuneration under the plan or the unconditional vesting or measurement of benefits under the plan is subject to future events which represent a true contingency.

⁹ Prior to the proposals, Instruction 1(b) stated that: "An 'executive officer' of a person includes its president, secretary, treasurer, any vice president in charge of a principal business unit division, or function (such as sales, administration or finance), and any other person who performs similar policy-making function."

misconceptions as to the intent of the definition and was designed to provide clarity to registrants.

Certain commentators believed that without modifications the proposal would expand the definition of executive officer unnecessarily. Pursuant to these comments the language of the proposal was reconsidered, since the intent of the proposals was to provide clarification rather than to expand the category of individuals for whom disclosure would be necessary under Item 4(a)(1). In light of the concerns expressed by the commentators, the Commission has revised the proposal by inserting the word "such" to modify the term "policy-making functions for the registrant," to indicate that the executive officer of a subsidiary must perform the same types of functions as other persons constituting executive officers of the registrant. In this regard, the Commission is providing additional guidance in response to certain comments by codifying the Division of Corporation Finance's published interpretation regarding the determination of the individuals to be named in the remuneration table.¹⁰ New Instruction 1(c) to Item 4(a) states, in pertinent part, that "[r]egistrants should exercise a measure of flexibility in determining which individuals should be named in the remuneration table in order to avoid anomalous results and to assure that disclosure documents contain information on key policy-making members of management." The Commission recognizes that under certain circumstances an individual who is nominally one of the five most highly compensated executive officers or directors may not be one of the key policy makers. Compensation may be inflated in a given year because of a non-recurring event, such as a large bonus or commission, and to include such an executive in the persons named in the table would be inappropriate.¹¹ If a registrant determines not to name an

executive officer in the table pursuant to the new instruction, that individual's compensation would still be included under the disclosure for the group of all officers and directors.

C. Item 4(b)—Proposed Remuneration¹²

Item 4(b) currently requires a brief description of all remuneration payments proposed to be made in the future pursuant to any plan or arrangement to the person and the group specified in the remuneration table.¹³ Because of numerous public inquiries, the Commission proposed, and has adopted substantially as proposed, a new Instruction 1 to Item 4(b) to make clear that disclosure is necessary for any remunerative plan or arrangement which is operable for more than the latest fiscal year, whether or not amounts attributable to such plan or arrangement are included in the tabular or textual disclosures of remuneration pursuant to Items 4(a), 4(c) or 4(d). Although one commentator believed that inclusion of amounts in the remuneration table would provide stockholders with sufficient information, the Commission believes that the instruction is necessary to assure that stockholders are provided with a full appreciation of remuneration to be paid in the future.

The operation of the new instruction may be illustrated by the situation where amounts attributable to an ongoing bonus plan have been disclosed in Column C1 of the table. Because the bonus plan will be operable in future years, a description of the plan is necessary and, in this case, should include, among other things, brief disclosure with regard to the payment formulas and general payment schedules.

Because the disclosure of remunerative plans which will continue to operate in subsequent fiscal years has not been as complete as necessary, and in response to certain commentators, the Commission has included in Item 4(b)(1) explicit requirements as to the composition of the necessary disclosure. The Commission is concerned that many companies have responded to the Item 4(b) requirement by describing the operation of a formal, highly-structured plan¹⁴ in terms so general that as a

result there is little understanding by stockholders of the level of performance and the period of time needed to generate payments under the plan. Furthermore, there has been a failure to make clear whether the compensation measurements relate to short-term or long-term objectives or performance.

The Item 4(b)(1) description should include a summary of how each plan operates, any performance formula or measure in effect, the time periods over which the measurement of benefits will be determined, payment schedules, and any recent material amendments to the plan. For the most part, this represents a codification of the position taken by the staff in Interpretive Response 40 in Release No. 33-6166, and will make the disclosure more meaningful to stockholders.

Disclosure as to operations of future incentive plans is essential to a shareholder's comprehension of remuneration policies. The goals explicitly or implicitly set by such plans may affect, and indeed are often specifically designed to affect, management's conduct of company affairs. The Commission expects more complete disclosure of future incentive programs as a result of the clarification of Item 4(b), and encourages companies to provide explanations of the relationship of incentive compensation programs to short-term and long-term corporate objectives.

D. Pension Plan Disclosure

As noted in the May 1980 release, many questions have arisen with regard to the disclosure of amounts relating to defined benefit and actuarial plans. In Release No. 33-6166, the staff discussed this area in detail and offered an alternate format of disclosure by way of interpretation. The purpose of the May 1980 proposals, which have been adopted substantially as proposed, was to codify the staff's suggested alternative as a mandatory requirement.

The treatment of pension and retirement plans under the 1978 amendments, set forth in Instruction 3(a)(i) to Item 4(a), required that the amount expended for financial reporting purposes by a registrant or its subsidiaries for the year representing the contribution, payment or accrual for the account of the specified individuals or group be included in Column D if the distribution of such remuneration or the unconditional vesting or measurement of benefits thereunder was subject to

including "all plans, contract, authorizations, or arrangements, whether or not set forth in any formal documents."

¹⁰ In Release No. 33-6027, the Division of Corporation Finance issued its interpretive views regarding certain aspects of the management remuneration disclosure requirements of Item 4, including the Division's view on the determination of which members of management comprise the five most highly compensated executive officers and directors to be named in the table.

¹¹ New Instruction 1(c) to Item 4(a) sets forth certain standards to be applied in making the necessary determination to exclude an executive's name in the remuneration table. However, the instruction further states that "a registrant should not apply the above standards mechanically; consideration should be given to the question of whether a person's level of remuneration would give rise to a conclusion that the person may be among the five most highly compensated, key policy-making executive officers or directors."

¹² The disclosure required by this provision is parallel to that which had been required for some time by former Item 7 of Schedule 14A (17 CFR 240.14a-101).

¹³ Item 4(b) has also been separated into two sub-items and reworded. Item 4(b)(1) relates to proposed remuneration in general and Item 4(b)(2) addresses pension disclosure and is discussed below.

¹⁴ It should be noted that Instruction 6 to Item 4(a) describes the term "plan" as used in Item 4 as

future events.¹⁵ However, with respect to the overwhelming majority of defined benefit or actuarial plans, the same Instruction 3(a)(i) provided that if the "amount of the contribution, payment or accrual (with) respect (to) a specified person is not and cannot readily be separately or individually calculated by the regular actuaries of the plan," then such amounts could be omitted from the remuneration table provided a footnote was included.¹⁶ The footnote required disclosure of the excluded amounts, indicating the percentage which the aggregate contributions to the plan bore to the total covered remuneration of the plan participants, and a brief description of the remuneration covered by the plan. In turn, Item 4(b) required that, with respect to amounts so excluded under Instructions 3(a)(i) and (ii), a separate table be included to show estimated annual benefits payable upon retirement to persons in specified remuneration and year-of-service classifications.

Because of the apparent difficulty in calculating the amount of contribution attributable to each participant under most subject plans, the footnote disclosure required by former Instruction 3(a)(ii) and the Item 4(b) pension table has been extensively utilized. When this has not been the case, the Commission has reason to believe that there has been an inconsistency regarding the inclusion of amounts relating to these plans in the remuneration table. In any event, the Commission perceives little reason to continue requiring different disclosure for the same form of remuneration.

Accordingly, the adopted amendments, like the proposals, deal with all defined benefit and actuarial pension plans. The amendments adopted today will exclude all amounts relating to defined benefit or actuarial plans from the remuneration table by amending Instruction 3(a)(i) and deleting the footnote requirement of Instruction 3(a)(ii).

New Item 4(b)(2), which contains the disclosure requirements concerning such plans, has been adopted substantially as proposed. The overwhelming majority of the commentators indicated approval of the Commission's attempt to improve the nature of the disclosure in this area and considered the proposal to be an improvement over the existing format.

As a result of certain views expressed by the commentators and to assist stockholders in understanding the type of pension plan maintained by the registrant, certain revisions have been incorporated into the pension disclosure requirements as adopted.

As revised, Item 4(b)(2) will require a pension table¹⁷ showing estimated annual benefits payable upon retirement to individuals is specified remuneration and years of service classifications. In response to a number of questions that have arisen with regard to the disclosure of amounts in response to Item 4(b)(2) as proposed and to provide for uniform disclosure, this item has been revised to require that: (1) The estimated annual benefits disclosed in the pension table include any amounts attributable to any supplementary or excess pension award plans; (2) the registrant describe the remuneration covered by the plan, and indicate its relationship to remuneration reported in Column C1 of the Item 4(a) remuneration table; (3) the registrant indicate whether the benefits listed in the pension table are subject to any deduction for Social Security benefits or other offset amounts; and (4) the amount presented in the pension table be on a straight life annuity basis notwithstanding the availability of joint survivorship provisions.

The proposed definition of "normal retirement" was not adopted because of the commentators' concerns that the term is unclear. Mandatory retirement ages, if any, vary, and the proposed disclosure for years of service at normal retirement of the individuals named in the Item(a) table would provide little meaningful information. As adopted, Item 4(b)(2) will require that registrants state the credited years of service under the plan for each of the Item 4(a) individuals so that shareholders will be able to relate the pension benefits described with the executive officers identified in the remuneration table.

The May 1980 Release contained a proposed Note following the pension table which would have provided that the table reflect reasonable increases in existing compensation levels. Most commentators considered this information to be speculative and potentially confusing to stockholders. The Note has been redrafted as Instruction 2 to Item 4(b)(2) and, at the suggestion of one commentator, registrants will be permitted to use an upper limit for the disclosure of increases in the existing compensation levels. Specifically, to provide

registrants some certainty as to the amounts which should be reflected in the table, Instruction 2 to Item 4(b) provides that registrants may present, as the highest remuneration level reported, an amount equal to 120 percent of the highest amount of covered compensation which is reported in the table required by Item 4(a).

An alternative format is allowed by Instruction 3 to Item 4(b) where pension or actuarial plans are not based upon the final year's (or years') remuneration. For such plans, a registrant must provide a description of the plan (including benefit formula) and indicate the estimated annual benefits upon normal retirement¹⁸ for individuals named in the Item 4(a) remuneration table. However, this alternative is available only for plans not suitable for disclosure in the regular pension table. All final year (or final average years) type plans must continue to be disclosed in the required pension table format.

E. Options and Stock Appreciation Rights

In the May 1980 Release, the Commission proposed certain revisions to the instructions to Item 4(a) of Regulation S-K which were designed to remove option and stock appreciation right ("SAR") plans, including certain phantom stock plans, from the remuneration table. Under the proposals, all disclosures of remuneration under such plans, previously included in the remuneration table, would be set forth in an expanded option table pursuant to Item 4(d) of the Regulation.

With few exceptions, the response of the commentators was overwhelmingly supportive of the thrust of the proposals to remove from the Item 4(a) remuneration table disclosure respecting stock option and SAR plans. Commentators who supported the proposal uniformly agreed with the Commission's position that such remuneration disclosure may bear little or no relationship to the services rendered to the registrant during the fiscal year and, consequently, may tend to distort the remuneration table and confuse the shareholder. Many of these commentators, however, advanced criticisms and suggestions with regard to the proposals, and the adopted rules are responsive to many of these concerns.

¹⁸ For plans not reported in the regular pension table, normal retirement age is defined (in accordance with a commentator's suggestion) as provided in the plan, or if the plan has no definition, the earliest age at which the individual may retire without benefit reduction on account of age.

¹⁷ Item 4(b) currently requires a pension table only when amounts are excluded from the remuneration table.

¹⁵ Under unusual circumstances, a plan may involve arrangements to which this condition would not apply and, instead, there would in a specific fiscal year be accrued or distributed for the account of the participant a cash or cash-equivalent amount. In this situation, reporting would occur in Column C with respect to the contribution for that year. See Release No. 33-6027.

¹⁶ Current Instruction 3(a)(ii) to Item 4(a).

1. *Option Disclosure.* Under the 1978 amendments, Instruction 2(b) to Item 4(a) specified with regard to any stock option that the spread, if any, between the acquisition price and the fair market price of the underlying security on the date of exercise be reported in Column C2 (less any amount that may have been previously reported with respect to such option).¹⁹ This method of option disclosure may not be meaningful and may tend to distort the compensation reported in Column C2 of the remuneration table for a particular officer or director, especially for the reporting period during which an option is exercised. While option plans may represent a significant element in many compensation packages, the calculation of remuneration thereunder may not be easily attributable to a given year of service. As stated in Release No. 33-6210, there have been instances where an officer, because of market conditions or other factors, has exercised during the latest fiscal year, options received over a number of years which resulted in the inclusion in Column C2 of the entire spread between the exercise price and the fair market value of the securities received in the year of such exercise.

Because of the disclosure problems presented by option plans, the Commission proposed to exclude the "spread" resulting from the exercise of stock options from disclosure in the remuneration table, and today the Commission adopted the basic concepts and methodology of the proposal. Instruction 2(b) to Item 4(a) has been amended to exclude the fair market value of the securities (less the exercise price) received pursuant to the exercise of stock options. All option information (other than the Item 4(b)(1) description of the plan) will be disclosed pursuant to modified Item 4(d) requirements.²⁰

The May 1980 Release also proposed the deletion of the *de minimis* exception in Instruction 3 to Item 4(d). Of the twelve commentators who responded to the Commission's specific inquiry in this area, only one supported the proposed deletion. However, after further study the Commission still believes that the *de minimis* exclusion is inappropriate in light of the fact that the spread relating to the exercise of options will no longer

be in the remuneration table.²¹ In addition, the Commission believes that no significant burden is placed on registrants because of the deletion since information on employee options and market prices of securities is readily available to the registrant.

While the proposals would have followed the current rules in requiring option disclosure to be presented for the period since the beginning of the registrant's last fiscal year,²² a specific inquiry was made in the May 1980 release on the time period issue. The commentators were overwhelmingly in favor of a fiscal year reporting requirement. The most frequently stated reason for deleting the reporting of option transactions occurring after the close of the last fiscal year was that this deletion would eliminate the duplicative reporting of such transactions in two consecutive years. Another often expressed view was that the reporting period for option transactions should be consistent with the fiscal year reporting period for the remuneration table. In light of these comments, the Commission has determined that the fiscal year period is appropriate in most cases,²³ will better facilitate year-to-year comparisons and will create more understandable disclosure. Moreover, a fiscal year period will allow for the reporting of SARs in tandem with options along with the options to which they relate.²⁴

A related new Instruction 7 to Item 4(d) was added to require disclosure of the granting of options or SARs since the end of the last fiscal year if the total market value of the underlying securities

on the granting dates exceeds \$50,000. Since the new options and SAR reporting provisions will already require disclosure of potential (unrealized) value at the end of the year, there appears no reason to require further information for the interim period as to exercise or realization of options or rights by which an individual obtains a portion of that potential value. Exercise or realization, and changes in potential value, will be reflected in the following year's remuneration disclosure. New grants are the only changes over which the company has control, and, accordingly, interim disclosure will be required only as to significant new grants. The Commission believes that this requirement is appropriate in light of the new fiscal year reporting period, is consistent with the more complete disclosure of future remuneration plans under Item 4(b), and will allow stockholders to appreciate more fully the operation of such plans.²⁵

Proposed Item 4(d)(3) would have mandated option disclosure²⁶ for "all other employees" of the registrant in addition to the disclosure required for only officers and directors. The response of the commentators who specifically addressed this proposal was overwhelmingly negative. Most commentators believed that information concerning all other employees would not be material in most cases. The Commission has reconsidered its position and has decided not to require option or SAR information as to "all other employees" except where currently required.²⁷ Registrants are urged, however, to consider such disclosure where it would facilitate integration of Exchange Act and Securities Act disclosure such as in the Form S-8 (17 CFR 239.16b) which permits the incorporation by reference of option information appearing in an issuer's proxy statement.²⁸

Under former Item 4(d), the average option price was required to be disclosed both for options exercised and options outstanding at the end of the period, but there was no actual

¹⁹ The correlative new provisions in Item 4(d) relating to SARs not in tandem with options, which are described below, also have no *de minimis* exception.

²⁰ In addition, proposed Instruction 3 to Item 4(d) would have allowed option information to be reported separately for (1) option transactions during the past fiscal year; and (2) option transactions since the close of the fiscal year to the latest practicable date. Since a fiscal year period has been adopted, this proposal was not necessary and was not adopted.

²¹ However, with regard to a registration statement filed under the Securities Act of 1933 by a company not subject to Exchange Act reporting requirements, new Instruction 5 to Item 4(d) requires information regarding options and SARs for the period since the beginning of the last fiscal year through a date not more than 30 days prior to the date of filing the registration statement. Further, with regard to any company, Instruction 6 to Item 4(d) has been retained and requires that information with regard to unexercised options (and SARs in tandem therewith) be presented as of a date not more than 30 days prior to the date of filing of the registration statement. It should be noted that these requirements relate only to situations where Item 4(d) information must be presented in a prospectus, rather than incorporated by reference therein.

²² See discussion regarding SARs in tandem with options, *infra*.

²³ The requirement in Instruction 7 does not apply if information called for by Item 4(d) is incorporated by reference, rather than presented, in a registration statement filed pursuant to the Securities Act.

²⁴ Likewise, proposed Item 4(d)(vi) would have required SAR information for all other employees.

²⁵ See Items 9(d)(iii), 10(d)(iii) and 11(c)(iii) of Schedule 14A.

²⁶ As stated in Instruction 4 to Item 3 of Form S-8 ("Purchase of Securities Pursuant to Plan"), the information regarding options required under Item 3 of Form S-8 is more extensive than presently called for by Item 4(d) of Regulation S-K. Of course, registrants may include the balance of the Item 3 information in their proxy statements and incorporate by reference such data into a Form S-8.

¹⁹ This is one of the few instances where Item 4 does not follow generally accepted accounting principles. In most cases, there is no accounting expense for the grant or exercise of a stock option.

²⁰ Instruction 5 to Item 4(d), which remains unchanged, states in pertinent part that the information called for by the Item 4(d) may be furnished in the form of the table set forth in Appendix A to Schedule 14A. Appendix A has been revised to reflect today's amendments to Item 4(d).

disclosure in the remuneration table of amounts realized on exercise of options or of the potential value of unexercised options. The May 1980 proposals sought disclosure of amounts realized and unrealized gain as to SARs. The amendments on disclosure of potential value apply to options as well as SARs. New Item 4(d)(ii) not only requires disclosure of amounts realized from SARs held in tandem with options, but also requires disclosure of the value realized upon exercise of an option, generally the "spread" between the market price of securities received less any option price. Similarly, Item 4(d)(iii) will require disclosure of the potential (unrealized) value of all options and tandem SARs outstanding at the end of the period. (Item 4(d)(iv) requires similar disclosure for SARs not in tandem with options.)

Most commentators voiced some degree of disapproval of the concept of unrealized gain in the context of proposed stock appreciation rights table. The Commission believes, however, that the disclosure of potential (unrealized) value of outstanding options and SARs, as well as value realized upon exercise, is necessary and appropriate to a more complete understanding of the operation of such remuneration packages.²⁹ By moving the options and SAR disclosure out of the remuneration table, the Commission recognizes that amounts realized in connection with such remuneration are not precisely allocable to specific periods. Nevertheless, there should be some disclosure of the events which actually result in value being received by the officer or director—exercise or realization—and of the total of the individual's potential benefits. Disclosure of an average option exercise price or the SAR base price, while helpful, does not directly indicate either value realized or potential value—it is also necessary to compare the option or base price to the current market price. The Commission believes it is appropriate for registrants to make this comparison and disclose values, rather

than prices.³⁰ Moreover, by using these value concepts, the disclosure of options and SARs will be consistent and, therefore, information concerning SARs and options can easily be integrated in the table relating to options and tandem SARs (or even in a single table relating to all options and SARs if the registrant so chooses). More generally, since option and SAR information will no longer be in the remuneration table, the Commission believes that the Item 4(d) data should be as complete and understandable as possible.

Other than the disclosure of value received upon exercise and potential (unrealized) value of outstanding options at the end of the period, Item 4(d) will require data similar to that of the former item. Item 4(d)(i)³¹ requires information as to options granted during the period including (1) the title and aggregate amount of securities subject to options; (2) the average option price per share; and (3) if the option price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date. Item 4(d)(ii) requires as to options exercised during the period disclosure of the value of securities received less any exercise price paid. Item 4(d)(iii) requires as to unexercised options information concerning (1) the amount of underlying securities involved; and (2) the aggregate potential (unrealized) value (market value of such securities less the aggregate exercise price).

2. Stock Appreciation Rights and Phantom Stock Not in Tandem with Options. At the time of the May 1980 proposals, the Commission was concerned that the inclusion in the remuneration table of amounts expended for financial reporting purposes for SARs and interests in

phantom stock plans may have tended to confuse shareholders as to the nature of the registrant's compensation arrangements for the fiscal year. It had become apparent that this was particularly true for unexercised rights under such market-based award plans, since these rights are subject to the unpredictable fluctuations of the market-place. Where value changes are taken into account in determining financial reporting expense for the year in which the market value changes occur, the amount reported in the remuneration table (the amount expended) may have no relation to services rendered during the fiscal year.

Under the 1978 amendments, Instruction 3(b)(i) to Item 4(a) required that Column D of the remuneration table reflect the annual market change that is expensed for financial reporting purposes with regard to SARs and certain phantom stock plans.³² In addition, former Instruction 3(b)(i) to Item 4(a) permitted a credit to be taken against any amounts previously reported in Column D, if in a subsequent fiscal year the registrant, in connection with the same plan or arrangement, credited its remuneration expense for financial reporting purposes. As a result of these provisions, the reporting of SARs may have consisted of positive entries in one year followed by a series of negative entries in subsequent years depending on the movement of the market price of the underlying security.

In the May 1980 Release, the Commission stated that because of the above mentioned concerns, as well as the fact that SARs and similar phantom stock plans contribute a significant percentage of the negative amounts reflected in Column D, prior Item 4(d) requirements may not have been serving the purpose of the remuneration table, which is to reflect remuneration attributable to services rendered in the latest year. In response to these considerations, the Commission proposed certain revisions to Instructions 2(b) and 3(b) to Item 4(a) and to Item 4(d) of Regulation S-K.

Generally, the May 1980 proposals were designed to exclude amounts relating to SARs and interests in certain phantom stock plans from the remuneration table, while requiring certain disclosure concerning such plans pursuant to an expanded Item 4(d) requirement. In this regard, Item 4(d) was proposed to be amended by adding two new subparts which would have required separate disclosure with

²⁹ Of course, values realized may be subject to conditions. For example, an officer purchasing stock on exercise of an option may be obligated to hold for at least six months because of Section 10(b) of the Exchange Act (15 U.S.C. 78p(b)), and the market price may change before a sale is possible. Likewise, potential (unrealized) value may include amounts which are not currently available for an officer or director because the option or right is not yet vested or exercisable; and potential value may change after the valuation date if the market price fluctuates. A registrant is free to make appropriate disclosure of additional facts, such as vesting provisions, performance or other contingencies and market and exercise prices, which may bear on the value or potential value of remuneration. New Instruction 10 to Item 4(d) specifically allows registrants, if they choose, to set forth separately the potential value attributable to exercisable options or SARs and the potential value attributable to rights which are not currently exercisable.

³¹ Items 4(d)(i), 4(d)(ii) and 4(d)(iii) also relate to stock appreciation rights granted in tandem with options. The subject of tandem SARs will be discussed below.

³² For a further discussion of this subject, see Interpretive Responses 8 through 11 in Release No. 33-6166.

²⁸ It should be noted that the proposed Instruction 7 to Item 4(d) has been adopted as Instruction 8. Instruction 8 states that in calculating potential (unrealized) value of outstanding options and SARs, issuers should report the realizable value as though it had been realized at the valuation date. All outstanding rights or options with exercise prices above the market price as of the valuation date should be disregarded in determining this calculation. Therefore, potential value for options, SARs and similar rights will not be a net figure, but rather would be calculated only as to those options or rights with respect to which option or base prices were below the current market price. In this manner, the amounts realizable if exercise occurred on the reporting date will be disclosed.

respect to SARs and interests in phantom stock plans. With regard to all such plans, proposed Item 4(d)(iv) would have called for the following information: (1) The number of SARs granted during the last fiscal year; (2) the number of SARs exercised during the last fiscal year; and (3) the number of SARs outstanding as of the end of the fiscal year. Likewise, proposed Item 4(d)(v) would have required disclosure of: (1) The unrealized gain relating to all SARs held under these plans as of the beginning of the last fiscal year; (2) the unrealized gain with respect to SARs granted during the year; (3) the value of cash or securities received upon exercise during the last fiscal year; and (4) the unrealized gain relating to all SARs held at the end of the last fiscal year. A proposed amendment to Instruction 1 to Item 4(d) would have defined the term "stock appreciation right" as including interests in phantom stock plans. However, this proposed Instruction did not otherwise define SAR or phantom stock plans. Appendix A of Schedule 14A was proposed to be expanded to accommodate the above information in a table separate from the option disclosure. As with options, use of the Appendix A format was not to be mandatory.

The Commission continues to believe that the proposed removal from the remuneration table of disclosure relating to SARs (including phantom stock), when coupled with stock options, is appropriate and that the new table will provide meaningful information to stockholders in a more easily understandable manner. For this reason, the Commission has determined to adopt the May 1980 proposals with certain modifications in response to further review and to the commentators. The following first discusses the disclosure of SARs not in tandem with options, and then discusses tandem SARs.

With few exceptions, the response of the commentators was overwhelmingly in support of the proposals to remove disclosure regarding SARs and certain phantom stock plans from the remuneration table. The commentators believed that major changes in annual remuneration created by price swings in the market have produced tabular data which is not meaningful. While supporting the concept of the proposals, some commentators criticized its methodology and suggested changes.

A common suggestion was that the Commission should define the term "phantom stock" as used in proposed Instruction 1 to Item 4(d). Since the primary reason for removing SARs from

the remuneration table was to address the distortive effects of reporting market fluctuations in Column D, the Commission has decided to adopt a definition of SARs which includes interests in phantom stock plans and which is applicable only to Item 4 of Regulation S-K. This definition is consistent with the salient characteristics of SARs. Specifically, new Instruction 1 to Item 4(d) defines a SAR (including an interest in a phantom stock plan) as a compensation right or unit under which the measurement of benefits to be received is a function of the market price of the underlying security, and a change in such market value is taken into account in determining expenses for financial reporting purposes for the year in which the market value change occurs.³³

The definition of SARs does not cover all compensation programs which may be called "stock appreciation" or "market based" plans, under which compensation is based on market value or market appreciation; nor does the definition cover performance-based plans where the measurement of compensation is unrelated to market prices of securities. For example, if a share unit (or restricted share) is expensed solely on the basis of the value of the share at the time of grant with no subsequent charge or credit to earnings reflecting market value changes, the unit (or restricted share) would not be a SAR under the above definition.³⁴ Also, certain commentators suggested that all contingent or future value incentive plans should be treated similarly whether market-based or performance-based. While sympathetic to such views, the Commission has not been able to develop an appropriate format which is brief and easily comprehensible and which comports with the current framework of remuneration disclosure. Therefore, performance compensation, the measurement of which is based on earnings, increases in book value or similar standards, will also continue to

be reported in the Item 4(a) remuneration table. If earnings go up and, as a result, additional compensation is expensed for a period, it is appropriate to associate that expense with that period by continuing to report the expense in the remuneration table.

The rules adopted today are designed only to remove from the remuneration table those options and SARs which, if left in the table, would cause compensation expenses and remuneration to fluctuate based on market value change through the period from grant to exercise or realization. The Commission believes that this change is responsive to the most serious distortions which have arisen.

In adopting these amendments, the Commission has made the disclosure of options and SARs consistent. As to SARs not in tandem with options, Item 4(d)(iv) requires the following: (1) The number of rights granted during the period and the average base price³⁵ thereof; (2) the number of rights outstanding at the end of the period; (3) the value of the cash or securities received upon exercise or realization of rights during the period; (4) the number of rights outstanding at the end of the period; and (5) the potential (unrealized) value of all rights outstanding at the end of the period. Unlike the proposals, the amendments do not call for unrealized gain for all rights outstanding at the beginning of the period and unrealized gain for rights granted during the period. The Commission agrees with the commentators who stated that such disclosure was unnecessary.³⁶ Registrants are encouraged to combine the Item 4(d) disclosure of options and SARs wherever practicable under the circumstances. The consistency of the requirements will facilitate such integration.

3. Stock Appreciation Rights In Tandem With Options. In the May 1980 Release, the Commission solicited comments as to whether an instruction should be included in Item 4(d) which would address possible double-reporting of SARs that are granted in tandem with options. In the past, many questions have arisen concerning the reporting of tandem grants under Item 4(d). In most

³³Registrants are directed to Accounting Principles Board Opinion No. 25 and appropriate interpretations thereunder.

³⁴The aggregate of the change in market value from grant until issuance of the share (or lapse of restrictions) would be reflected in the remuneration table upon such issuance (or lapse); appreciation would appear in Column C2, depreciation in Column D. See Question and Response 12 of Release No. 33-6166. However, in the case of a deferred of bonus arrangement of the type described in Question and Response 14 of Release No. 33-6166, where the bonus amount is expensed at time of deferral and phantom stock is credited to the employee's account, Column C1 would still be used to report the bonus amount, but the right to market appreciation of the phantom stock would be reported in effect as a SAR or phantom stock under item 4(d).

³⁵New Instruction 12 to Item 4(d) defines "base price" as the amount used to define benefits which are available only to the extent that the market price of the underlying security exceeds such amount. For example, a SAR with a base price of \$10 (the market price at time of grant) provides for payment of a benefit equal to the amount by which the market price at time of exercise or realization exceeds \$10.

³⁶See the discussion of option disclosure, *supra*, for the commentators' views regarding unrealized value at the end of the period.

cases, the holder may exercise either the SAR or the option, but not both. That is, the market appreciation on the underlying securities may be received in the form of cash or securities in lieu of receiving securities by paying the option price upon exercise of the tandem option. Commission filings indicate that a significant portion of all SARs are in tandem with options.

The proposals would have required the separate reporting of SARs whether or not they were in tandem with options. Most commentators suggested that this would constitute double reporting of the same potential benefit and would cause confusing disclosure. Two major alternatives were advanced: (1) Disclosure of the tandem units in a combined table; and (2) separate disclosure of tandem grants coupled with an explanatory footnote. Several commentators suggested alternative tabular formats.

The amendments require a combined presentation for tandem rights within the Item 4(d) option information. In the Commission's view, this is the most feasible and logical approach. Item 4(d)(i) will require the separate identification of the amount of securities subject to options granted during the period which are in tandem with SARs. Similarly, Item 4(d)(iii) will require the separate identification of the amount of securities subject to options outstanding at the end of the period which are in tandem with SARs. All other information concerning tandem SARs will be included in the data concerning options.³⁷

A definition of the term "tandem" has been added as new Instruction 11 to Item 4(d) which states, in pertinent part, "[f]or purposes of this Item 4(d), an option shall be deemed in tandem with a stock appreciation right * * * if the benefits under one represent an alternative to or reduce the benefits available under the other." This definition was considered appropriate since it includes only those SARs for which double-reporting was a problem under the proposals.

4. *Performance Unit Rights In Tandem With Options and/or SARs.* During the comment process, it came to the Commission's attention that there are some companies that are granting performance unit rights ("PURs") in tandem with options and/or SARs. Typically, such plans allow the holder the alternative of exercising a PUR and receiving either cash or shares of stock, to the extent that predetermined

objectives are achieved, in lieu of exercising the related option or SAR.³⁸ When both a SAR and a PUR are granted in tandem with an option, accounting practice requires the expensing of an amount relating to the PUR in a given year if that is the most likely employee alternatives based on the facts available. Two commentators suggested that by failing to exclude amounts expensed for such PURs from the remuneration table the proposals would result in the double-reporting of compensation.

The Commission agrees that the appropriate location of tandem PUR information is with the related option and SAR data. In this regard, new Instruction 3(b)(3) to Item 4(a) will exclude from Column D the financial reporting expense for any form of performance or other contingent compensation unit granted in tandem with an option or SAR. Instruction 12 to Item 4(d) will require that the existence of a tandem PUR be disclosed in reference to the related option or SAR and that any value realized from such unit shall be included under the value realized from the exercise of the related option or SAR. Likewise, any accrual balance at the end of the period with regard to such PUR will be reported under potential (unrealized) value for the related option or right.

The formulation of the term "tandem" in instruction 13 to Item 4(d) applies in the same manner with regard to PURs as it does with options and SARs. That is, a PUR will be deemed in tandem with an option and/or a SAR if the realization of value under the PUR will reduce or be an alternative to the realizable value under the option or SAR.

F. Item 4(e)—Indebtedness of Management

The Commission has adopted as proposed an amendment to Item 4(e) which expands the exception relating to indebtedness incurred in the ordinary course of business to savings and loan associations and to broker-dealers extending credit under Federal Reserve Regulation T. This proposal was generally supported by the commentators.

Under the amendment, the specified entities will not have to furnish detailed disclosure with regard to loans extended to management if a statement is

³⁸ In many cases the performance units granted under this method serve as a "safety net" for the stock options or SARs, such that, if the stock market does not adequately reflect improved company performance, the units will generate payments based on company financial results equal to a portion of a predetermined expected stock option or SAR value.

included that the loans to such persons: (1) Were made in the ordinary course of business; (2) were made on substantially the same terms, including interest and collateral, as those prevailing at the time for comparable transactions with unaffiliated persons; and (3) did not involve more than the normal risk of collectibility or present other unfavorable features.³⁹ In the Commission's view, the same policy considerations regarding bank loans to management should apply to these other regulated industries.⁴⁰

The Commission has also increased the *de minimis* exception in Instruction 2 to Item 4(e) from \$10,000 to \$25,000 to account for inflation.

G. Item 4(f)—Transactions With Management

In order to be consistent with the Item 4(a)(1) requirements, the *de minimis* exclusion in Item 4(f) has been increased from \$40,000 to \$50,000.

H. Item 4(h)—Termination of Employment

Proposed Item 4(h) would have required a description of any remunerative plan or arrangement, not previously disclosed, that results or would result from the termination of employment of any individual named in the remuneration table in any of the last three fiscal years. Although a number of commentators suggested that information regarding termination arrangements may be required by other sections of the proxy rules, the Commission's experience in administering the remuneration disclosure requirements has indicated a lack of disclosure of such arrangements. The Commission continues to believe that such arrangements are significant to an assessment of the registrant's compensation policy and should be disclosed. Accordingly, the proposed

³⁹ One commentator suggested that the exception be expanded to include finance companies. The Commission is not convinced that the same sort of regulation as to insider loans exists for finance companies and therefore has not expanded upon the proposal.

⁴⁰ The Commission for some time has had under consideration the possible modification of the scope of the exception for management indebtedness to regulated lending entities. In addition, the Commission staff is currently considering recommending to the Commission modifications of Item 6(b) of Schedule 14A (17 CFR 240.14a-101), which requires certain disclosure as to relationships involving directors, and related aspects of Item 4(f) of Regulation S-K, which requires disclosure of transactions with officers and directors. See Division of Corporation Finance, Securities and Exchange Commission, Staff Report on Corporate Accountability 96th Cong., 2nd Sess. 68-92 (Comm. Print 1980) (Senate Comm. on Banking, Housing and Urban Affairs).

³⁷ See Table I of revised Appendix A to Schedule 14A in the Text of the Amendments for a possible presentation of such information.

disclosure requirements are being adopted with revisions.

To address certain of the concerns of the commentators and to provide meaningful disclosure to stockholders, a number of revisions have been incorporated into the Item. The first revision relates to the period of time covered by the Item. As adopted, the operative period of time for disclosure of separation payments for Item 4(a) individuals has been reduced so as to require information with respect to individuals named in the Item 4(a) remuneration table either in the latest fiscal year or the preceding fiscal year.⁴¹ The commentators' suggestion that the period of time be limited to the latest fiscal year has not been adopted. Such a period would not require disclosure of separation payments made to an Item 4(a) executive identified in the registrant's proxy statement for one year, but who terminated early in the next year and whose remuneration for that next year, as a result of the termination in mid-year, is not sufficiently high to require naming that individual in the proxy material for that year. The Commission believes that such payments should be disclosed to stockholders and accordingly has adopted the Item to include executives identified in the preceding year's proxy statements.

To eliminate the need to report immaterial termination payments, however, a \$50,000 *de minimis* exclusion has been incorporated into the instructions. Although one commentator suggested that the Commission adopt a *de minimis* exemption based upon the level of remuneration reported in the Item 4(a) table, the Commission has adopted the \$50,000 exemption since a specific dollar exclusion is consistent with the other *de minimis* levels set forth throughout the proxy rules, particularly Item 4(f) relating to transactions with management.

Instruction 3 has been included to define the term "previously disclosed" for the purposes of Item 4(h). The term includes situations where the arrangements have been generally disclosed in prior proxy or information statements filed with the Commission pursuant to Section 14 of the Exchange Act, notwithstanding the fact that the precise amount to be received by a given individual has not been disclosed. For example, a lump sum payment permissible under the terms of the registrant's pension plan would not be a disclosable event under the Item 4(h)

⁴¹ The proposal would have required information for persons named in the Item 4(a) table in any of the last three fiscal years.

provided that the registrant had included in prior year's proxy statements full disclosure with regard to the registrant's pension plan pursuant to Item 4(b).

Incorporation of Prior Interpretations and Technical Changes

In the May 1980 Release, the Commission reaffirmed the prior interpretive releases⁴² in the area of management remuneration and noted that certain portions of those releases remain in effect to the extent consistent with or not superseded by Item 4 as amended. In response to a number of requests to reflect as many of these interpretations as possible in the clarifying amendments of Item 4, the Commission has incorporated into the text of the item those interpretive responses which have generic applications. For example, the first four basic disclosure concepts underlying the remuneration disclosure requirements set forth in Securities Act Release 6166 have been incorporated into Item 4. Similarly, the staff interpretive positions expressed in Securities Act Release 6027 and interpretive responses 13, 20, 21, 22, 23, 30, 32 and 52 of Securities Act Release 6166 have also been incorporated into the item as amended. The Commission believes that the incorporation of these interpretations will assist registrants and their advisors in preparing the remuneration portions of their disclosure documents.

The Commission, however, has not incorporated into Item 4 all the interpretive responses previously rendered by the staff, since such inclusion would needlessly expand Item 4 with unnecessary detail and interpretations not having general applicability. Accordingly, with certain

⁴² In Release No. 33-5856 (August 18, 1977) (42 FR 43058), the Commission expressed the view that the existing remuneration reporting provisions required registrants to report as remuneration certain personal benefits or "perquisites." These views were codified in Instruction 2(d) to Item 4(a) of Regulation S-K with the adoption of the amendments to Item 4 in December 1978 (Release No. 33-6003 (43 FR 58151)). In Release No. 33-5904 (February 6, 1978) (43 FR 6060), the Commission's Division of Corporation Finance was authorized to publish its interpretive views regarding specific aspects of personal benefits disclosure. Although the 1978 amendments did not alter the majority of the interpretive responses expressed in the latter release, several interpretations were modified or superseded by certain provisions of the amended Item and by subsequent staff interpretation. See Release 33-6166 (December 12, 1979) (44 FR 74808), Part V, "Personal Benefits." In Release Nos. 33-6027 (February 22, 1979) (44 FR 16368) and 33-6166 (December 12, 1979), the Commission authorized the Division of Corporation Finance to publish its views with regard to certain interpretations of Item 4. See also, letter to Clark Hutton, Esq., regarding Manufacturers Hanover Corporation, dated January 24, 1980.

exceptions,⁴³ the interpretive positions expressed in those releases and not incorporated into Item 4 of Regulation S-K are still in effect and may be relied upon by the registrant in responding to the requirements of Item 4.

As proposed, the Commission has renumbered certain paragraphs of Item 4 to conform these paragraphs and their subparts to the other section of the Item. The elimination of the inconsistent numbering scheme as well as new underlining (or italicizing) and indentation techniques are intended to improve the readability of the Item.

The Commission has also adopted certain technical language changes which are designed to clarify the requirements and are not substantive in nature.

Certain Findings

As required by Section 23(a)(2) of the Exchange Act, the Commission has specifically considered the impact which the amendments adopted herein would have on competition and has concluded that they would impose no significant burden on competition. In any event, the Commission has determined that any possible burden will be outweighed by, and is necessary and appropriate to achieve, the benefit of these amendments to investors and registrants.

Text of Amendments

The text of Item 4, as amended is set forth below:

PART 229—STANDARD INSTRUCTIONS FOR FILLING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

1. 17 CFR 229.20 is amended by revising Item 4 as follows:

229.20 Information required in document.

* * * * *

⁴³ As a result of the amendments to Item 4 adopted today the following interpretive positions expressed in Release Nos. 33-6166 and 33-5904 are no longer applicable.

In Release No. 33-6166 interpretive responses 4, 5, 8, 9, 10 and 11 relating to the reporting in the remuneration table of amounts attributable to stock options, stock appreciation rights and phantom stock plans are no longer applicable in light of the removal of amounts attributable to such plans from the Item 4(a) remuneration table. In Release No. 33-5904, interpretive responses 1, 3 and 4 have been rendered inapplicable by the nature and scope of new Item 4; interpretive responses 8 [other than the last sentence], 10, 11, 12 and 18 of that Release have been revised by Instruction 2(d) to Item 4(a); interpretive response 27 has been superseded by interpretive response 33 in Release No. 33-6166 and subparts (d) and (e) of interpretive response 7 and subpart (b) of interpretive response 35 regarding evaluation of personal benefits are no longer acceptable valuation standards.

Item 4. Management remuneration.**Item 4(a). Current remuneration.**

Furnish the information required in the table below, in substantially the tabular form specified, concerning all remuneration (except remuneration for which disclosure is required by Item 4(b)(2) or Item 4(d)) paid or distributed through the latest practicable date to, or accrued through such date for the account of, the following persons and group for services in all capacities to the registrant and its subsidiaries during the registrant's last fiscal year, or in specified instances,

certain prior fiscal years:

Item 4(a)(1). Five executive officers or directors. Each of the five most highly compensated executive officers or directors of the registrant as to whom the total remuneration required to be disclosed in Columns C1 and C2, below, would exceed \$50,000, naming each such person; and

Item 4(a)(2). All officers and directors. All officers and directors of the registrant as a group, stating the number of persons in the group without naming them.

Item 4(a)(3). Specified Tabular Format.

Remuneration Table

(A)	(B)	(C) Cash and cash-equivalent forms of remuneration		(D)
Name of individual or number of persons in group	Capacities in which served	(C1)	(C2)	Aggregate of contingent forms of remuneration
		Salaries, fees, directors' fees, commissions, bonuses	Securities or property, insurance benefits or reimbursement personal benefits	

Instructions to Item 4(a)

Instruction 1. Columns A and B: persons subject to this item.

Instruction 1(a) to Item 4(a). This Item 4(a) applies to any individual who was an executive officer, officer, or director of the registrant at any time during the fiscal year. However, subject to the last sentence of Instruction 2(b) to Item 4(a), information need not be given for any portion of the period during which such individual was not an executive officer, officer, or director of the registrant, provided a statement to that effect is made. With respect to an individual who becomes for the first time an individual whose remuneration is to be reported in the table, it is not necessary to report remuneration which would have been reported in the table had the individual been included in prior years. For example, if a bonus was accrued for an individual and expensed for financial reporting purposes prior to the individual becoming an officer, the payment subsequent to the individual becoming an officer of the amount accrued and expensed for such bonus need not be reported. Item 4(a)(1) applies to executive officers and directors. Item 4(a)(2) applies to executive officers, other officers, and directors.

Instruction 1(b) to Item 4(a). An "executive officer" of the registrant means its president, secretary, or treasurer, any vice president of the registrant in charge of a principal business unit, division, or function (such as sales, administration or finance), and any other individual who performs similar policy-making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy-making functions for the registrant.

Instruction 1(c) to Item 4(a). Registrants should exercise a measure of flexibility in determining which individuals should be named in the remuneration table in order to

avoid anomalous results and to assure that disclosure documents contain information on key policy-making members of management. Specifically, registrants may determine not to name a particular individual in the remuneration table when such individual otherwise might nominally be one of the five most highly remunerated executive officers or directors. The types of matters a registrant should consider in exercising its discretion not to name an individual include: (i) The distribution or accrual of an unusually large amount (such as a bonus or commission), otherwise required to be reflected in Column C1 or Column C2, which is not part of a recurring arrangement and is unlikely to continue under the terms of the plan or any similar plan; and (ii) the distribution or accrual of amounts relating to overseas assignments which may be attributed predominantly to such assignments. However, a registrant should not apply the above standards mechanically; consideration should be given to the question of whether an individual's level of executive responsibilities, viewed in conjunction with the individual's actual level of remuneration, would give rise to a conclusion that the individual may be among the five most highly compensated, key policy-making executive officers or directors. While the criteria set forth above may be used to determine which of the executive officers or directors shall be named in the table, the same standards should not be used as a basis for deleting such amounts from the remuneration table in response to Item 4(a)(2). Thus, while the above standards might allow a particular individual not to be one of those individually named, all relevant amounts should be reflected in the table's group totals with no exclusions based on the above standards. Moreover, if an individual is named in the table, the full amount of that individual's remuneration should be included in the remuneration table in accordance with the instructions to Item 4(a).

Instruction 2 to Item 4(a). Column C information. Column C shall include remuneration for services rendered during the fiscal year distributed to or for the account of the specified individual or group, or which is accrued and the measurement of benefits thereunder and the distribution or unconditional vesting thereof are not subject to future events. See Instruction 2(e) to Item 4(a). Column C shall also include any amount actually distributed in the latest fiscal year which relates to services rendered in a prior fiscal year, less any amount relating to the same contract, agreement, plan, or arrangement previously included in the remuneration table for a prior fiscal year, and less any amount which would have been so included but for the fact that the individual was not, in the earlier period, reflected in the remuneration table either as a named individual or a member of the group. However, if this calculation results in a credit, any such credit should be reflected in Column D and not Column C. See Instruction 3(b)(2) to Item 4(a). Column C shall include cash or cash-equivalent amounts distributed or accrued and should be segregated into two subcolumns; the first, C1, should include the forms of remuneration described in Instruction 2(a) to Item 4(a); the second, C2, should include the forms of remuneration described in Instructions 2(b), (c) and (d) to Item 4(a).

Instruction 2(a) to Item 4(a). Salaries. All cash remuneration distributed or accrued in the form of salaries, fees, directors' fees, commissions and bonuses should be included in Column C1. Where the total amount of a bonus pool for the latest fiscal year under a bonus plan is known at the time remuneration information is filed with the Commission, but the amounts allocated to each participant will not be determined until after the information is filed, the registrant should include a footnote indicating (A) that a bonus plan exists for the latest fiscal year, (B) the individuals named in the table who are participants in the plan, and (C) that amounts have not been allocated from the bonus plan to the individuals and thus are not included in the remuneration table. If the bonus pool participants are all officers and directors, the aggregate amount of the bonus accrual shall be reported in the group disclosure. In addition, registrants are required to disclose amounts subsequently allocated to the individuals named in the remuneration table for the next fiscal year.

Instruction 2(b) to Item 4(a). Securities or property. The spread between the acquisition price, if any, and the fair market price of all securities or property acquired, under any contract, agreement, plan or arrangement (excluding remuneration for which disclosure is called for by Item 4(d)) for the benefit of any of the specified individuals or group, less any amount previously reported in the remuneration table for a prior fiscal year with respect to the same contract, agreement, plan or arrangement. The fair market price of any such securities or property shall be determined as of the date during the fiscal

year that either of the following events occurs, or if the plan or arrangement contemplates that both such events may occur, the fair market price shall be determined as of the date during the fiscal year that the later event occurs:

(1) The recipient exercises an election (similar to the exercise of an option or right) in connection with the contract, agreement, plan or arrangement; or

(2) The recipient becomes entitled without further contingencies to retain the securities or property.

The foregoing disclosure is required with respect to an exercise or entitlement realized within the last fiscal year, even though, as permitted by a plan, the exercise or entitlement occurs shortly after termination, in the same year, of employment of the participant who is otherwise subject to remuneration disclosure for that year.

Instruction 2(c) to Item 4(a). Life or health insurance; medical reimbursement plans. The cost of premiums paid by the registrant or any of its subsidiaries on life or health insurance policies insuring any such individual or group (unless the sole beneficiary under the policy is the registrant or its subsidiaries), and the costs of any medical reimbursement plans (which may be the benefits paid under any such plans) for the benefit of the specified individuals and the group shall be allocated to such individual and group and reflected in Column C2. Information need not be furnished pursuant to this Instruction 2(c) to Item 4(a) for any costs under group life, health, hospitalization, or medical reimbursement plans which do not discriminate, in scope, terms or operation, in favor of officers or directors of the registrant and which are available generally to all salaried employees.

Instruction 2(d) to Item 4(a). Personal benefits. The value of personal benefits which are not directly related to job performance, other than those provided to broad categories of employees and which do not discriminate in scope, terms or operation in favor of officers or directors, furnished by the registrant or its subsidiaries directly or through third parties to each of the specified individuals and the group, or benefits furnished by the registrant or its subsidiaries to other persons which indirectly benefit the specified individuals.

(1) **Valuation.** Such benefits shall be valued on the basis of the registrant's and subsidiaries' aggregate actual incremental costs; however, if such aggregate costs are significantly less than the aggregate amounts the recipient would have had to pay to obtain the benefits, appropriate disclosure, including the aggregate value to the recipient, should be made in a footnote to the table. The registrant may choose to disclose such aggregate value, rather than aggregate incremental costs, in the table in which event such footnote disclosure is not required.

(2) **Conditional exclusion of personal benefits.** If the registrant cannot determine without unreasonable effort or expense the specific amount of certain personal benefits, or the extent to which benefits are personal rather than business, the amount of such personal benefits may be omitted from the table provided that, after reasonable inquiry,

the registrant has concluded that the aggregate amounts of such personal benefits which cannot be specifically or precisely ascertained do not in any event exceed \$10,000 as to each individual or, in the case of a group, \$10,000 for each individual in the group and has concluded that the information set forth in the table is not rendered materially misleading by virtue of the omission of the value of such personal benefits.

(3) **Footnote disclosure.** If as to an individual named in the table an amount representing personal benefits included in Column C2 exceeds 10 percent of the aggregate amount disclosed in Columns C1 and C2 or \$25,000, whichever is less, include a footnote to the table stating the dollar amount or percentage of Column C2 represented by such personal benefits and briefly describing the kinds of such benefits.

Instruction 2(e) to Item 4(a). Certain remuneration which is subject to future events. Remuneration for a fiscal year under plans of the types described in Instruction 3 to Item 4(a) (excluding remuneration for which disclosure is called for by Item 4(d) or Item 4(b)(2)) shall be included in Column C for such fiscal year if as of the end of such fiscal year such remuneration was distributed to or for the account of the specified individuals or group, or was accrued and the measurement and the distribution or unconditional vesting thereof were not subject to future events. If a plan provides for remuneration, some of which is and some of which is not subject to future events, the former is reportable in Column D and the latter is reportable in Column C. Remuneration conditioned on substantial future service is subject to future events under this standard. Similarly, if the amount or value of, or entitlement to, remuneration is dependent on future earnings performance or market values, such remuneration is subject to future events under this standard. However, if dependence on future events does not represent a true contingency, remuneration should be reported in Column C.

Instruction 3 to Item 4(a). Column D. Column D shall include remuneration of the specified individuals and group in whole or in part for services rendered during the fiscal year, including but not limited to the forms of remuneration described in paragraphs (a) through (c) below, if such remuneration is properly expensed for financial reporting purposes, and the measurement of benefits thereunder or the distribution or unconditional vesting thereof is subject to future events, so that the remuneration is therefore not reportable in Column C. See Instruction 2(e) to Item 4(a). Registrants need only report remuneration in Column D as it relates to the latest fiscal year and need not report amounts expensed in previous fiscal years.

Instruction 3(a) to Item 4(a). Pension or retirement plans; annuities; employment contracts; deferred compensation plans. As to each of the specified individuals and group, include as remuneration any amount expensed for financial reporting purposes by the registrant and its subsidiaries for the fiscal year with respect to contributions,

payments, or accruals for the account of any such individual or group under any existing pension or retirement plans (except remuneration for which disclosure is required by Item 4(b)(2)), annuity contracts, deferred compensation plans, or any other similar arrangements. Such remuneration should be reflected in the amounts and for the fiscal year in which they are expensed under all such plans or arrangements, including plans qualified under the Internal Revenue Code.

Instruction 3(b) to Item 4(a). Incentive and compensation plans and arrangements.

(1) With respect to remuneration under incentive or compensation plans or arrangements (other than remuneration for which disclosure is called for by Item 4(d)), pursuant to which the measure of benefits is based on objective standards or on securities (or an amount or value of securities) of the registrant or another person, granted, awarded or entered into at any time in connection with services to the registrant or its subsidiaries, include as remuneration as to each of the specified individuals and group any amount expensed for financial reporting purposes by the registrant and its subsidiaries for the fiscal year with respect to any such specified individual or group attributable to an interest in any such plan or arrangement.

(2) If the registrant has expensed amounts for financial reporting purposes and reported such amounts in the remuneration table and, in a subsequent year, in connection with the same plan or arrangement, credits its remuneration expense for financial reporting purposes, for any proper reason, such credit may be reflected as a reduction of the remuneration reported in Column D. If amounts credited pursuant to this instruction are so reflected in the table, include a footnote briefly stating the amount of such credit and describing such treatment. In situations in which there are several plans and virtually everyone in the remuneration table is a participant in each plan, to the extent that negative entries in Column D for individuals and for the group are attributable to the same factors, the footnote disclosure required by this Instruction 3(b)(2) to Item 4(a) may be generic in nature. If negative entries reflect changes in several types of plans or other factors not common to all individuals and the group, and separate disclosure would result in lengthy narrative, it is sufficient to provide a general explanation of the circumstances giving rise to negative entries without a separate explanation of the components of each negative entry for individuals or the group. Excessive detail should be avoided.

(3) The financial reporting expense (or credit) for any form of performance or other contingent compensation granted in tandem with options or rights under plans for which disclosure is called for by Item 4(d) shall be excluded from Column D, and the information required by Instruction 12 to Item 4(d) shall be presented.

Instruction 3(c) to Item 4(a). Stock purchase plans; profit sharing and thrift plans. Include the amount of any contribution, payment or accrual for the account of each of the specified individuals and the group under any stock purchase,

profit sharing, thrift, or similar plans which has been expensed during the fiscal year by the registrant and its subsidiaries for financial reporting purposes. Amounts reflecting contributions under plans qualified under the Internal Revenue Code may not be excluded.

Instruction 4 to Item 4(a). Transactions with third parties. Item 4(a), among other things, includes transactions between the registrant and a third party when the primary purpose of the transaction is to furnish remuneration to the individuals or group specified in Item 4(a). Other transactions between the registrant and third parties in which persons specified in Item 4(a) have an interest, or may realize a benefit, generally are addressed by other disclosure requirements concerning the interest of management and others in certain transactions, particularly Item 4(f). Item 4(a) does not require disclosure of remuneration paid to a partnership in which any officer or director was a partner; any such transactions should be disclosed pursuant to these other disclosure requirements, and not as a note to the remuneration table presented pursuant to Item 4(a).

Instruction 5 to Item 4(a). Other permitted disclosure. The registrant may provide additional disclosure through one or more footnotes to the table, through additional lines or columns, or otherwise, describing the components of aggregate remuneration in such greater detail as is appropriate.

Instruction 6 to Item 4(a). Definition of "plan". The term "plan" as used in this Item 4 includes all plans, contracts, authorizations, or arrangements, whether or not set forth in any formal documents.

Item 4(b). Proposed remuneration.

Item 4(b)(1). Briefly describe all remuneration payments proposed to be made in the future pursuant to any ongoing plan or arrangement to the individuals and group specified in Item 4(a). The description should include a summary of how each plan operates, any performance formula or measure in effect (or the criteria used to determine payment amounts), the time periods over which the measurement of benefits will be determined, payment schedules, and any recent material amendments to the plan. Information need not be furnished with respect to any group life, health, hospitalization, or medical reimbursement plans which do not discriminate in scope, terms or operation in favor of officers or directors of the registrant and which are available generally to all salaried employees.

Item 4(b)(2). As to defined benefit and actuarial plans, include (in addition to describing such plans pursuant to paragraph (1) above) a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any supplementary or excess pension award plans or arrangements) to persons in specified remuneration and years-of-service classifications. Amounts presented in the pension table should be straight life annuity amounts notwithstanding the availability of joint survivorship provisions. In addition, the registrant shall (i) describe the remuneration covered by the plan, including the

relationship of such covered remuneration to remuneration reported in the table as required by Item 4(a); (ii) state the credited years of service under the plan for each of the individuals named in the table required by Item 4(a), and also their current remuneration covered by the plan if it differs substantially (by more than 10% for each individual) from that set forth in Column C1 of the Item 4(a) table; and (iii) indicate whether the benefit amounts listed in the table are subject to any deduction for Social Security benefits or other offset amounts.

Example of Pension Table

Remuneration	Years of service				
	15	20	25	30	35
125,000.....					
150,000.....					
175,000.....					
200,000.....					
225,000.....					

Instructions to Item 4(b)

Instruction 1 to Item 4(b). Item 4(b)(1) requires a brief description of any remuneration plan or arrangement which is operable for more than the latest fiscal year, whether or not remuneration under such plan has been reported or is reportable pursuant to Items 4(a), 4(c) or Item 4(d) of this regulation.

Instruction 2 to Item 4(b). Remuneration levels set forth in the Item 4(b)(2) pension table should allow for reasonable increases in existing compensation levels; alternatively, registrants may present as the highest remuneration level in the pension table an amount equal to 120% of the highest amount of covered remuneration of any individual named in the table required by Item 4(a) for the fiscal year.

Instruction 3 to Item 4(b). If the registrant has a defined benefit or actuarial pension plan or plans which are such that the use of the Item 4(b)(2) pension table is inappropriate to inform stockholders of the pension benefits that the Item 4(a) individuals may receive, because the pension benefits are not determined primarily by final compensation (or average final compensation) and years of service (such as a plan where the annual benefit is determined by a summation of a certain amount or certain percentage of compensation for each year of the individual's entire career), the registrant should describe the plan as required by Item 4(b)(2) together with the formula by which benefits are determined, and indicate the estimated annual benefits payable upon retirement at normal retirement age for the individuals specified in Item 4(a). For purposes of this Instruction 3 to Item 4(b), normal retirement age shall mean normal retirement age as defined under the plan or, if not so defined, the earliest time at which a participant may retire without any benefit reduction because of age.

Instruction 4 to Item 4(b). Under Item 4(b), a plan of deferred compensation for services as a director must be disclosed. In addition, if such arrangement is not standard for all directors, the name of each director participating in such arrangement and the

amount of such remuneration earned by each should be indicated. Cross-references to the remuneration table required by Item 4(a) may be used for this purpose. See also Item 4(c)(2).

Item 4(c). Remuneration of directors

Item 4(c)(1). Standard arrangements. Describe any standard arrangement, stating amounts, by which directors of the registrant are compensated for all services as a director, including any additional amounts payable for committee participation or special assignments.

Item 4(c)(2). Other arrangements. If a director of the registrant received remuneration for services as a director during the fiscal year in addition to or in lieu of that specified by any standard arrangement, state the name of the director and the amount of such remuneration earned by each; if this information is given as to an individual named in the table required by Item 4(a), a cross-reference may be used.

Item 4(d). Options, warrants, or rights.

Furnish the following information as to all stock appreciation rights and options to purchase securities from the registrant or any of its subsidiaries which were granted to or exercised or realized by the following persons during the registrant's last fiscal year (or, if applicable, the alternate period specified in either Instruction 5 or Instruction 6 to Item 4(d)) and as to all options and stock appreciation rights held by such persons at the end of the last fiscal year (or of such alternate period): (1) each director or executive officer named in answer to Item 4(a) (1), naming each such individual; and (2) all directors and officers of the registrant as a group, without naming them.

(i) As to options granted during the specified period, state (A) the title and aggregate amount of securities subject to options; (B) the average per share option exercise price; and (C) if the option exercise price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date shall be disclosed. The title and aggregate amount of such securities subject to options, if any, which are in tandem with stock appreciation rights should be separately set forth.

(ii) As to the exercise or realization of options or stock appreciation rights held in tandem with options granted during the specified period or prior thereto, state the net value of securities (market value less any exercise price) or cash realized during the specified period.

(iii) As to all unexercised options or stock appreciation rights in tandem therewith held as of the end of the specified period, state (A) the title and aggregate amount of underlying securities; and (B) the aggregate potential (unrealized) value of such options or rights, as of the end of the specified period (market value less any exercise or base price). The title and aggregate amount of securities subject to options which are in tandem with stock appreciation rights, if any, should be separately set forth.

(iv) As to stock appreciation rights not in tandem with options, state (A) the number of rights granted during the specified period; (B)

the average per share base price thereof; (C) the number of rights outstanding at the end of specified period; (D) the net value of the shares (market value) or cash realized during the specified period upon exercise or realization of any such rights, granted during the specified period or prior thereto; (E) the number of rights outstanding as of the end of the specified period; and (F) the potential (unrealized) value of all such rights outstanding as of the end of the specified period (market value less any base price).

Instructions to Item 4(d)

Instruction 1 to Item 4(d). The term "options" as used in this Item 4(d) includes all options, warrants or rights, other than those issued to security holders as such on a pro rata basis. Where the average option price per share is called for, the weighted average price per share shall be given. The term "stock appreciation right" means a right representing a share of the registrant or another person under which right the holder may in the future realize compensation measurable by reference to the future market price of such share and payable in cash, securities, or other property, where a change in the market value of the share is properly taken into account in the expensing of such compensation for financial reporting purposes for the fiscal year in which the change in market value occurs. Thus, this definition may include interests in certain plans, such as some phantom stock plans, which are not denominated as stock appreciation right plans. For the purposes of this Item 4(d), if reference is made to a number of options or stock appreciation rights, such number should correspond to the number of securities to which the options or rights relate.

Instruction 2 to Item 4(d). The extension, regranting or material amendment of options or stock appreciation rights shall be deemed the granting of options and stock appreciation rights within the meaning of Item 4(d).

Instruction 3 to Item 4(d). If the options or rights relate to more than one class of securities, the information shall be given separately for each such class.

Instruction 4 to Item 4(d). The information called for by Item 4(d) may be furnished in the form of the table set forth in Appendix A to Schedule 14A.

Instruction 5 to Item 4(d). If the information called for by Item 4(d) is required to be presented in a registration statement filed pursuant to the Securities Act of 1933 on behalf of a registrant which is not then subject to the reporting requirements of section 13(a) or section 15(d) of the Securities Exchange Act of 1934, such information regarding options and stock appreciation rights shall be given for the period since the beginning of the registrant's last fiscal year through a date not more than 30 days prior to the date of filing the registration statement, specifying such date. Such information may, but need not, be reported separately for option and stock appreciation right transactions during the past fiscal year and such transactions since the close of the last fiscal year through such specified date, and such information regarding options and stock

appreciation rights held shall be given as of the specified date.

Instruction 6 to Item 4(d). With regard to any registrant, if the information called for by Item 4(d)(iii) is required to be presented, rather than incorporated by reference, in a registration statement filed pursuant to the Securities Act of 1933, the information required by Item 4(d)(iii) shall be reported for all options and stock appreciation rights in tandem therewith (regardless of who holds them) as of a date 30 days prior to the date of filing of the registration statement. Instructions 1 through 5 do apply.

Instruction 7 to Item 4(d). Except where the information called for by Item 4(d) is incorporated by reference, rather than presented, in a registration statement filed pursuant to the Securities Act of 1933, a registrant reporting option and stock appreciation right information on a fiscal year basis shall, if the total market value on the granting dates of securities underlying all options or stock appreciation rights granted since the end of the last fiscal year exceeds \$50,000 for any executive officer or director named pursuant to Item 4(a), also present the following information as to such options and rights as of the most recent practicable date: (A) The title and aggregate amount of underlying securities, (B) the exercise or base price of such options or rights, and (C) if the exercise or base price was less than 100% of market price the underlying security on the date of grant, such fact and the market price of the underlying security.

Instruction 8 to Item 4(d). In calculating the potential (unrealized) value of outstanding rights or options, the value of an option or right shall be determined as though it had been exercised or realized on the valuation date, and without regard to the fact that actual realization of any of or all benefits under the option or right may be subject to unsatisfied contingencies or conditions. All outstanding rights or options with exercise or base prices above the market price on the valuation date shall be disregarded in making this calculation; the total should reflect only options or rights with positive unrealized values and should not be reduced by negative unrealized values.

Instruction 9 to Item 4(d). If securities rather than cash are received upon the exercise or realization of a stock appreciation right, the fair market value of said securities on the date of exercise or realization should be reported pursuant to this Item 4(d).

Instruction 10 to Item 4(d). With regard to Items 4(d)(iii) and 4(d)(iv), registrants may also state, at their option, that portion of the potential (unrealized) value reported which relates to options and/or rights that are not currently vested, exercisable or realizable.

Instruction 11 to Item 4(d). The base price of a stock appreciation right is the amount used to define benefits which are available only to the extent that the market price of the underlying security exceeds such amount. For example, a stock appreciation right with a base price of \$10 (the market price on date of grant) provides for payment of a benefit equal to the amount by which the market price at time of exercise exceeds \$10. In the case of a phantom stock right providing for payment of the full value of a share, without

reduction by or payment of any amount, the base price is zero.

Instruction 12 to Item 4(d). If a performance unit or other contingent compensation right (other than an option or stock appreciation right) is in tandem with an option or stock appreciation right, the existence of such right shall be disclosed either with information about options pursuant to Item 4(d)(i)-(iii) (if such right is in tandem with an option or with a stock appreciation right which is itself in tandem with an option) or with information about stock appreciation rights pursuant to Item 4(d)(iv) (if such right is in tandem only with a stock appreciation right with is not itself in tandem with an option). The value realized from such rights shall be included as value realized upon exercise or realization of options or stock appreciation rights, as the case may be, and shall not be reported pursuant to Item 4(a) or Item 4(c); and the potential (unrealized) value of such rights shall be taken into account in determining the potential (unrealized) value of options or stock appreciation rights, as the case may be. See Instructions 8 and 13 to Item 4(d).

Instruction 13 to Item 4(d). For purposes of this Item 4(d), an option shall be deemed in tandem with a stock appreciation right, and a performance unit or other contingent compensation right will be deemed in tandem with an option or stock appreciation right, and vice versa in each instance, if the benefits under one represent an alternative to or reduce the benefits available under the other. Where rights or options are in tandem with one another, a registrant shall present, as potential (unrealized) value, the maximum amount which may be realized under such rights and/or options if all were exercised and/or realized on the valuation date in the manner most beneficial to the holder (without counting more than one of any benefits which are alternative to one another).

Item 4(e). Indebtedness of management. State as to each of the following persons who was indebted to the registrant or its subsidiaries at any time since the beginning of the last fiscal year of the registrant, (1) the largest aggregate amount of indebtedness outstanding at any time during such period, (2) the nature of the indebtedness and of the transaction in which it was incurred, (3) the amount thereof outstanding as of the latest practicable date, and (4) the rate of interest paid or charged thereon: (i) each director or officer of the registrant; (ii) each nominee for election as a director; and (iii) each associate of any such director, officer or nominee.

Instructions to Item 4(e)

Instruction 1 to Item 4(e). Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

Instruction 2 to Item 4(e). This Item 4(e) does not apply to any person whose aggregate indebtedness did not exceed \$25,000 or 1 percent of the registrant's total assets, whichever is less, at any time during the period specified. Exclude in the determination of the amount of indebtedness all amounts due from the particular person for purchases subject to usual trade terms, for ordinary travel and expense advances and

for other transactions in the ordinary course to business.

Instruction 3 to Item 4(e). Notwithstanding Instruction 2 of Item 4(e), if the registrant or any of its subsidiaries is engaged primarily in the business of making loans and loans to any of the specified persons in excess of \$25,000 or one percent of its total assets, whichever is less, were outstanding at any time during the period specified, such loans shall be disclosed. However, if the lender is a bank, savings and loan association, or a broker-dealer extending credit under Federal Reserve Regulation T (12 CFR Part 220), such disclosure may consist of a statement, if such is the case, that the loans to such persons (a) were made in the ordinary course of business, (b) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons, and (c) did not involve more than normal risk of collectibility or present other unfavorable features.

Instruction 4 to Item 4(e). If any indebtedness required to be described arose under section 16(b) of the Act and has not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the issuer or its subsidiaries and whether suit will be brought or other steps taken to recover such profit. If in the opinion of counsel a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transaction, including the prices and number of shares involved.

Instruction 5 to Item 4(e). If the information called for by Item 4(e) is being presented in a registration statement filed pursuant to the Securities Act of 1933 or the Securities Exchange Act of 1934, the information called for by Item 4(e) shall be presented for the last three fiscal years.

Item 4(f). Transactions with management. Describe briefly any transaction since the beginning of the registrant's last fiscal year or any presently proposed transactions, to which the registrant or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating the person's relationship to the registrant, the nature of the person's interest in the transaction and, where practicable, the amount of such interest:

- (1) Any director or officer of the registrant;
- (2) Any nominee for election as a director;
- (3) Any security holder who is known to the registrant to own or record or beneficially more than five percent of any class of registrant's voting securities; and
- (4) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person or who is a director or officer of any parent or subsidiary of the registrant.

Instructions 1 to Item 4(f)

Instruction 1 to Item 4(f). No information need be given in response to this Item 4(f) as to any remuneration or other transaction reported in response to any other subitems of this Item 4 or as to any remuneration or transaction with respect to which information may be omitted pursuant to any other paragraphs of this Item 4.

Instruction 2 to Item 4(f). No information need be given in answer to this Item 4(f) as to any transaction where:

(a) The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed \$50,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the registrant and the specified person receives no extra or special benefit not shared on a pro rata basis.

Instruction 3 to Item 4(f). It should be noted that this Item 4(f) calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the registrant or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item 4(f) where:

(a) The interest arises only (1) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (2) from the direct or indirect ownership by such person and all other persons specified in Item 4(f)(1)-(4), in the aggregate, of less than a 10-percent equity interest in another person (other than a partnership) which is a party to the transaction, or (3) from both such position and ownership;

(b) The interest arises only from such person's position as a limited partner in a partnership in which the person and all other persons specified in (1) through (4) above had an interest of less than 10 percent; or

(c) The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest) or a creditor interest in another person which is a party to the transaction with the registrant or any of its subsidiaries and the transaction is not material to such other person.

Instruction 4 to Item 4(f). The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

Instruction 5 to Item 4(f). In describing any transaction involving the purchase or sale of assets by or to the registrant or any of its subsidiaries, otherwise than in the ordinary course of business, state the cost of the assets

to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller. If the information prescribed by this instruction is to be included in a registration statement filed on Form S-11, disclose the aggregate depreciation claimed by the seller for federal income tax purposes, if acquired by the seller within five years prior to the transaction. Indicate the principle followed in determining the registrant's purchase or sale price and the name of the person making such determination.

Instruction 6 to Item 4(f). If the information called for by Item 4(f) is being presented in a registration statement filed pursuant to the Securities Act of 1933 or the Securities Exchange Act of 1934, the period for which the information called for shall be reported is the previous three years.

Instruction 7 to Item 4(f). Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

Instruction 8 to Item 4(f). Information shall be furnished in answer to this Item 4(f) with respect to transactions not excluded above which involve remuneration from the registrant or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10% of any class of equity securities of another corporation furnishing the services to the registrant or its subsidiaries.

Instruction 9 to Item 4(f). If the filing to which this Item 4(f) relates is a registration statement under the Securities Act of 1933, information should be included as to any material underwriting discounts and commissions upon the sale of securities by the registrant where any of the specified persons was or is to be a principal underwriter or is a controlling person, or member, of a firm which was or is to be a principal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing underwriter pursuant to an agreement among underwriters the parties to which do not include the registrant or its subsidiaries.

Instruction 10 to Item 4(f). The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this Item 4(f). There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in the particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this item. The materiality of any interest or transaction is to be determined on the basis of the significance of the information to investors in light of all of the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction to each other and the amount involved in the transaction are

among the factors to be considered in determining the significance of the information to investors.

Item 4(g). Transactions with pension or similar plans. Described briefly any transactions since the beginning of the registrant's last fiscal year or any currently proposed transactions, to which any pension, retirement, savings or similar plan provided by the registrant, or any of its parents or subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the registrant, the nature of his interest in the transaction and, where practicable, the amount of such interest:

- (1) Any director or officer of the registrant;
- (2) Any nominee for election as a director;
- (3) Any security holder who is known to the registrant to own of record or beneficially more than 5 percent of the outstanding voting securities of the registrant;
- (4) Any relative or spouse of any of the foregoing persons, or any relative or such spouse, who has the same home as such person or who is a director or officer of any parent or subsidiary of the registrant; or
- (5) The registrant or any of its subsidiaries.

Instructions to Item 4(g)

Instruction 1 to Item 4(g). Instructions 2, 3, 4 and 5 to Item 4(f) shall apply to this Item 4(g).

Instruction 2 to Item 4(g). Without limiting the general meaning of the term "transaction" there shall be included in answer to this Item 4(g) any remuneration received or any loans received or outstanding during the period, or proposed to be received.

Instruction 3 to Item 4(g). No information need be given in answer to Item 4(g) with respect to:

- (a) Payments to the plan, or payments to beneficiaries, pursuant to the terms of the plan;
- (b) Payment of remuneration for services not in excess of 5 percent of the aggregate remuneration received by the specified person during the registrant's last fiscal year from the registrant and its subsidiaries; or
- (c) Any interest of the registrant or any of its subsidiaries which arises solely from its general interest in the success of the plan.

Item 4(h). Termination of employment. Describe, unless previously disclosed by the registrant in a proxy or information statement filed pursuant to section 14 of the Securities Exchange Act of 1934, any remunerative plan or arrangement, including payments to be received from the registrant, with any individual named in the Item 4(a) remuneration table for the latest or the next preceding fiscal year, if such a plan or arrangement results or will result from the resignation, retirement or any other termination by such individual of employment with the registrant and its subsidiaries.

Instructions to Item 4(h)

Instructions to Item 4(h). No information need be given in response to this Item 4(h) as to any remuneration or other transactions reported in response to any other subitems of this Item 4.

Instruction 2 to Item 4(h). No information need be given in answer to Item 4(h) as to

any plan or arrangement where the amount involved in the transaction including all periodic payments or installments does not exceed \$50,000.

Instruction 3 to Item 4(h). The term "previously disclosed" as used in this Item 4(h) includes situations where the arrangements have been generally disclosed in prior proxy or information statements filed with the Commission, notwithstanding the fact that the precise amount to be received by a given individual has not been precisely indicated.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

2. Section 240.14a-103 is amended by revising Appendix A as follows:

§ 240.14a-103 Appendix A (to Schedule 14A (§ 240.14a-101)).

The tables set forth below are illustrations of the presentation in tabular form of the information required by Item 4(d) of Regulation S-K (17 CFR 229.20.4(d)) and Instruction 3(c) to Item 9(d) of Schedule 14A, which also applies to Items 10(d) and 11(c) of Schedule 14A. If only Item 4(d) of Regulation S-K applies and Items 9, 10 and 11 of Schedule 14A are inapplicable, information need only be furnished for the period specified in Item 4(d), information called for in Table 1 as to shares sold may be omitted, and the reference at the foot of the table to options granted to employees may be omitted. See Instruction 4 to Item 4 (d) of Regulation S-K.

Other tabular presentations, including combination of the Tables into one, are of course acceptable if they include the necessary data. Tabular presentation may not be appropriate if only a very few options or stock appreciation rights have been granted.

Table 1—Stock Options and Tandem Rights

The following tabulation shows, as to certain directors and officers of the registrant and as to all directors and officers of the registrant as a group, the following information with respect to stock options and stock appreciation rights in tandem therewith (if any): (i) The title and aggregate amount of securities subject to options granted during the specified period, (ii) the average per share option exercise price thereof, (iii) the net value of shares (market value less any exercise price) or cash realized during the specified period upon the exercise or realization of such options or rights granted during the specified period or prior thereto, (iv) the numbers of shares sold during the specified period of the same class as those so acquired, and (v) the title and aggregate amount of securities subject to all such options or rights outstanding as of the end of the specified period, and (vi) the potential (unrealized) value of such outstanding options and rights as of the end of the specified period (market value less any exercise or base price). The title and aggregate amount of securities subject to tandem options granted during the specified period and outstanding at the end thereof are separately shown.

	John Jones	James Smith	Richard Roe	All directors and officers as a group
Granted — to —:				
Number of options without tandem rights.....				
Number of options with tandem rights.....				
Average per share exercise price ¹	\$	\$	\$	\$
Exercised — to —: Net value realized in shares (market value less any exercise price) or cash.....	\$	\$	\$	\$
Sales — to —: Number of shares.....				
Outstanding at —:				
Number of options ⁴ without tandem rights.....				
Number of options ⁴ with tandem rights.....				
Potential (unrealized) value (market value less exercise or base price) ²	\$	\$	\$	\$
In addition, during the period employees were granted options and tandem rights for a total of — shares at an average option or base price per share of \$ —.				

¹ If the option price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date must be disclosed.

² Sales by directors and officers who exercised options during the period from — to —.

³ Of the potential (unrealized) value at the end of the period, — pct relates to exercisable options and/or tandem rights, and — pct relates to unexercisable options and/or tandem rights.

⁴ The numbers of options or rights set forth above correspond to the numbers of shares to which they relate. All share figures have been adjusted in accordance with the terms of the options or rights to reflect the stock split in 19— and, where applicable, to give effect to share dividends.

Table II.—Stock Appreciation Rights not in Tandem With Options

The following tabulation shows, as to certain directors and officers of the registrant and as to all directors and officers of the registrant as a group, the following information with respect to stock appreciation rights (including interests in certain phantom stock plans): (i) The number of such rights granted during the specified period, (ii) the average per share base price thereof, (iii) the net value of shares (market value) or cash realized during the specified period upon exercise or realization of any such rights granted during the specified period or prior thereto, (iv) the number of such rights outstanding as of the end of the specified period, and (v) the potential (unrealized) value of all such rights outstanding as of the end of the specified period (market price less any base price).

	John Jones	James Smith	Richard Roe	All directors and officers as a group
Granted — to —:				
Number of rights ³				
Average base price.....	\$	\$	\$	\$
Exercised or realized — to —: Net value realized in shares (market value) or cash.....	\$	\$	\$	\$
Outstanding at —:				
Number of rights ³				
Potential (unrealized) value (market value less any base price) ¹	\$	\$	\$	\$
In addition, during the period employees were granted rights relating to a total of — shares at an average base price of \$ — per share.				

¹ Of the potential (unrealized) value at the end of period, — pct relates to exercisable rights, and —% relates to unexercisable rights.

² The numbers of rights set forth above correspond to the numbers of shares to which they relate. All stock appreciation right figures have been adjusted in accordance with the terms of the rights to reflect the stock split in 19— and, where applicable, to give effect to share dividends.

Authority

The amendments are adopted pursuant to the authority in sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933 and sections 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934.

The Commission finds that any changes in the amended provisions from those published in Release No. 33-8210 have already been generally subject to comment and are technical in nature or less burdensome than previous rules so that further notice and rulemaking procedures pursuant to the Administrative Procedures Act (5 U.S.C. 553) are not necessary.

By the Commission.

George A. Fitzsimmons,
Secretary.

November 14, 1980.

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BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 80F-0210]

Indirect Food Additives: Adhesive Coatings and Components Vinylidene; Chloride Copolymer Coatings for Nylon Film

AGENCY: The Food and Drug Administration.

ACTION: Final rule.

SUMMARY: Food and Drug Administration (FDA) amends the food additive regulations to provide for the safe use of methyl methacrylate and 2-sulfoethyl methacrylate as optional comonomers in vinylidene chloride copolymer coatings for nylon film used in articles intended for food contact. This action is based on a food additive petition filed by the Dow Chemical Co.

DATES: Effective November 21, 1980; objections by December 22, 1980.

ADDRESS: Written objections to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: A notice published in the Federal Register of June 27, 1980 (45 FR 43474) announced that a food additive petition (FAP 9B3468) had been filed by the Dow Chemical Co., 2040 Dow Center, Midland, MI 48640, proposing that § 175.360 *Vinylidene chloride copolymer coatings for nylon film* (21 CFR 175.360) be amended to provide for the safe use of methyl methacrylate and 2-sulfoethyl methacrylate as optional comonomers in vinylidene chloride copolymer coatings for nylon film used in articles intended for food contact.

FDA has evaluated data in the petition and other relevant material and finds that § 175.360 should be amended as set forth below to include the petitioned additives.